[Mr. K. P. Raman Pillai.]

THE UNIVERSITY COMMITTEE.

PRESIDENT: At the selection held last Friday evening, the following gentlemen were elected by the non-official members of the Council to sit on the University Committee:

Mr. T. K. Velu Pillai;

Mr. P. K. Narayana Pillai;

Mr. K. Paramesvaran Pillai; and

Mr. G. Paramesvaran Pillai.

THE NAIR REGULATION AMENDMENT BILL.

MR. K. P. RAMAN PILLAI: Sir, I move that the Nair Regulation Amendment Bill be read in Council.

MR. J. JOHN NIDIRY: I second it.

MR. K. P. RAMAN PILLAI: The motion having been seconded, though not by a member of my community, I wish I may be permitted to make a few observations on the principle of the bill. The alarming growth of family dissensions and the unquenchable thirst for litigation in the Nair community were definitely recognised by prominent members of the community, some years ago, to be bringing about a steady and continual deterioration in the moral and material prosperity of Nair *tarwads*. As the result of a careful diagnosis, the disease of the *tarwad* was traced to the evil effects of the joint family system in which the individual has no defined right or responsibility, where the incentive to personal exertion is the happiness of other people's children, and where the manager is compelled to maintain a host of sturdy irregulars over whom he has no manner of control. The principal ingredients prescribed by a committee of experts to arrest the growth of this disease, were *thavazhee* partition and a mixed system of inheritance. Unfortunately, when the committee's recommendations came up before the legislature, it failed to discharge its duties to the community, they say out of deference to the opinions of some of the Nair councillors and in pursuance of a policy of benevolent neutrality adopted by the Government in matters of social legislation. However, the halting provisions made by the committee in their draft bill dwindled down to Regulation I of 1088. The Nairs accepted the regulation, though not without demur, but continued their agitation in a more organised and intensified form, focussing their entire attention on the question of *makkathayam* and individual partition. The cry for these changes is so loud, so persistent and so large in volume that it may be safely taken to be the delibrate desire of the community as a whole. Of course, there is hardly any question without advocates of its other side. Accordingly there is still to be seen a negligible minority opposed to all changes. In their discussion on the question of partition, the

LIBRARY ARCHIVES Kerala Legislative Assembly

Marumakkathayam Committee have mentioned the statements of a few witnesses, of whom the late Mr. Kainakkari Govinda Pillai is said to have stated that the prohibition on alienation should last so long as the earth shall last, while Mr. M. K. Govinda Pillai B A., & B. L., said that the restriction on alienation should last 1,00,000 years. These, I reckon, have to be considered as the exceptions which prove the rule. As I observed the other day, in connection with the Ezhava Bill, it would be impossible to obtain unanimity in any community on matters of social legislation; and if we are to wait for its occurrence, we shall never be able to move forward.

The object of the present bill is to eradicate once for all the evils in the *marumakkathayam* system with a view to improve the moral, economic and industrial condition of its followers, by giving each member full scope for individuality and personal endeavour. by holding him responsible to take care of himself and his wife and children, in short, by compelling him to earn his bread by the sweat of his brow or in the alternative to beg or to starve. In the struggle for existence, in the race for progress, the bill aims at removing all handicaps and securing for the individual a start in life by giving him a definite share in his *tarwad* property as well as in his father's property. This will lead to the substitution of *tarwads* by families in the real sense of the word, united by bonds of natural love, where the children will look up to the parents with affectionate regard for support and guidance.

It may be taken for granted that the draft bill is not without its imperfections. Nor is it wholly uncontroversial. Clause 10 enjoins monogamy on Nairs, while it allows non-Nair Hindus to have a caste-wife and a Nair wife at the same time. I know there are some amongst us who strongly advocate the total prohibition of marriages with non-Nair Hindus. In view of that and the fact that 592 witnesses advocated polygamy in their statements before the *Marumakkathayam* Committee as against 453, I expect some honest difference of opinion in respect of this clause. The proviso to section 10 of the existing Regulation has been omitted so as to put it beyond the scope of a judicial enquiry to go into questions of adultery, sexual incapacity and kindred matters of conjugal infirmity and ugliness. This is in consonance with the wish of the community expressed by the legislature in the section on divorce.

Clause 13 replaces *misradayam* by pure *makkathayam*. The partial unnaturalness in inheritance was recommended by the *Marumakkathayam* Committee and accepted by the legislature on considerations of expediency and on the analogy of similar practices obtaining among the Ezhavas and the Nanjanad Vellalas. That these two communities are against the retention of the mixed system is clearly demonstrated by the adoption by this House of clause 15 of the Ezhava Bill and by a similar provision in clause 13 of the proposed Nanjanad Vellala Bill. It is therefore apprehended that the House would find no difficulty in accepting the principle of clause 13 of the bill. A further amendment to the existing law has been made by sub-section (*b*) of clause 13 which

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. P. Raman Pillai.]

provides that one-half or the whole of the self-acquired and separate property of a non-Nair Hindu husband dying intestate shall devolve upon his Nair widow and children, according as he has left behind undivided heirs or not. No originality is claimed for this provision, as it has already found a place in the Cochin Nair Regulation. Nor is this the first time that this wholesome innovation has been sought to be inserted in the Nair Regulation. My friend, Mr C. Raman Tampi, had it incorporated in the amendment bill which he had introduced in the defunct Council. I find that the provision was then attacked by Messrs. Trivikraman Vasudevar and M. Rajaraja Varma, against the untenability of whose arguments Mr. Tampi put up a spirited defence. Mr. Subba Aiyar then remarked that the Government had not made up their mind, one way or the other, on this matter and on the question of monogamy. I am sure both my friends must have revised their opinions and the Government made up their mind in such a way as to be able to support the principle of common justice and the sense of moral diginity that underlie the provision.

Chapter VI of the bill deals with the *tarwad* and its management. Part VI of the Nair Regulation has been freely altered in the hope that the new provisions would create a more harmonious and less disruptive atmosphere in *tarwads* till partition, or for ever in the case of such of them as are inclined to remain impartible. No doubt, a strict enforcement of the provisions may lead to a paucity of *karanavans* willing to manage the *tarwad*. No penal clauses have been inserted to meet the cases of non-observance by *karanavans* of the conditions laid down. The supply of this omission would make the position of the *karanavan* still worse.

Chapter VII consists only of three sections; but their enactment, it is hoped, would cut at the very root of the *marumakkathayam* system. The attempt is to give effect to the consenus of public opinion freely, forcibly and persistently expressed by responsible persons of the Nair community that individual partition of *tarwad* properties is the only remedy to remove the existing evils and to give free and full scope for individuality and personal endeavour.

The question of individual partition was not a point of reference to the *Marumakkathayam* Committee. The committee, however, found that the "great majority of educated men and almost all the ryot witnesses who have had greater experience of the working of the present system (*i. e.* 88 per cent. of the whole) are in favour of virtual or actual partition by *thavazhees*". They recommended *thavazhee* partition on considerations of expediency and were of opinion that, for the progress and well-being of the community, individual partition was the consummation to be wished. In recommending *thavazhee* partition, the committee have made the significant confession that the reasons which led them to recommend *thavazhee* partition were more applicable to individual partition than to partition in groups or *thavazhees*. In the

LIBRARY ARCHIVES Kerala Legislative Assembly

course of the committee's enquiry, it became evident that there was a large volume of intelligent and responsible public opinion in favour of individual partition which had for its exponent one of their own members, the late Mr. K. P. Padmanabha Menon, who, in his memorandum attached to the committee's report, has stated the case for individual partition with a convincing lucidity, thoroughness and ability that have hitherto been unsurpassed.

Individual partition has been accepted on all hands as the goal towards which the society is moving. That individual partition was recognised by the highest courts in Travancore and Cochin as an incident of *marumakkathayam* law even before 1049 admits of no doubt. It was probably the state of the law as it then existed that induced Sir. T. Madhava Rao to propose "to legislate for individual partition in 1040, long before individualistic ideas began to spread with the progress of education, when there was but one Nair graduate in the whole State." The Malabar Marriage Commission was also of opinion that, "when the time arises, the legitimate mode of breaking up the *tarwad* system consists in the introduction, as a disintegrating factor, of an individual right of partition in respect of *tarwad* property". The courts somehow came to adopt the theory of perpetual union regarding the *marumakkathayam tarwad* and have subsequently yielded to the force of circumstances and the wishes of the community in holding that separation of interests may be inferred from a sufficiently long course of conduct of a particular kind. The attempt now made is therefore to enact "a course of practice" to use the words of the Cochin Sirkar Appeal Court in A. S. 27 of 1045, "which has been invariably practised and uniformly acted upon and as such has obtained the force of law."

I do not believe there is any living member or friend of the Nair community who advocates the maintenance of the *marumakkathayam* system to-day in its archaic form. The matriarchal system in its strictest integrity is of interest only to the antiquarian, and the only model of the *tarwad* in all its pristine glory is safe in the hands of the Museum authorities.

The opponents of partition have all along admitted that the tendency of the community is towards inevitable disintegration; and the remedy they suggested was maintenance allotments in doles of grain or plots of land. A good many of these opponents of partition have, during the past sixteen years, become supporters of *thavazhee* partition, setting their face against individual partition. While I am prepared to give them equal credit for their honesty and for their sympathy for the existing condition of Nair *tarwads*, I am bound to repeat the observation made by the *Marumakkathayam* Committee that their objections are based on "unsound theory and imperfect inquiry." If they agree with the conclusion of the *Marumakkathayam* Committee that "individual partition is best calculated to promote the moral and material interests of the community", I ask them whether the time has not come to give it the stamp of the legislature. Is not their objection due more to sentiment and indecision than to anything substantial? I ask them in all sincerity if

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Padmanabha Pillai.]

the observation made by Mr. G. Paramesvaran Pillai at the time Mr. Raman Tampi introduced his bill is well-founded "Oftentimes it happens that each man's opinion on this question is largely coloured by the circumstances of his own family", is what Mr. Pillai remarked. This observation regarding the attitude of the opponents, if unrefuted, would certainly undermine their case. I firmly trust that no opposition would be made against individual partition on the ground that it would inconvenience or affect injuriously the interests of any single *tarwad* in particular, since chapter VIII of the bill has been provided deliberately to suit the convenience of such *tarwads*. I do not maintain that clauses 26 to 28 of the draft bill are incapable of any improvement. All that I wish to emphasise is the need for providing for individual partition in such a way that before long the natural system of inheritance should replace the existing unnatural system. I am not unaware of the fact that, by individual partition, the Nair woman would naturally get a share in the *tarwad* property. In order to safeguard the interests of women, polygamy is proposed to be abolished, and the maximum limit of Rs. 2,000 to be given in case of divorce has been omitted. I shall be prepared to discuss the desirability of making the right of maintenance of the widow and children a charge on the husband's property. Under the existing system, the *tarwad* is considered as the social unit, the individuals being considered as mere ciphers. The question has been raised whether under the proposed system the parent or the individual is going to be the social unit. Again, *tarwad* property, it is contended, is held in trust for the benefit of the present as well as future generations. Are we right in depriving the unborn children of their right in the *tarwad* property merely because they happen to be born a day after the passing of this regulation? These and kindred questions, such as the division of large holdings into small ones, will have to be carefully and anxiously considered by the Select Committee, who, I am confident will be able to propose solutions for every reasonable difficulty in such a way as would be suited to the best interests of the community at large.

In conclusion, I may point out that the burden of piloting this bill through the Council has been shifted from the sturdy shoulders of a veteran councillor to the feeble ones of my humble self, by the fickleness of a fate which worked through the ballot box; and may I ask my friends to co-operate with me, in a spirit of comradeship, to bring about its successful passage through the Council in the minimum time possible, so as to satisfy the heartfelt yearnings of a community struggling to free itself from the last throes of economic extinction, but possesing a glorious record of its noble past?

MR. N. PADMANABHA PILLAI: Sir, I support the bill in principle, but not in its present form. I accept the principles of *makkathayam* and individual partition. I have very deep sympathy with the conservative section of the community which still believes in the *marumakkathayam* system as conferring all the

LIBRARY ARCHIVES Kerala Legislative Assembly

desired advantages and which opposes any change in that system as being detrimental to the social and economic prosperity of the community. The *marumakkathayam* system has its charms and advantages; and I should prefer to remain where I am, if possible. But, all the same, it has to be conceded that the system has, to a great extent, become unworkable. There was a time when the *marumakkathayam* system worked in its true spirit and when it conferred large advantages on the community. The politics in *marumakkathayam tarwads* at that time were a mere struggle on the part of the *karanavan* to improve the conditions in his *tarwad* day by day, at which the bulk of the members of the *tarwad* looked on very much like a modern crowd at a foot-ball match. The *anandaravars* then were fairly content to be governed as they were, and the community was on the whole more prosperous than at the present day. But, as time went on, this crust of convention was rudely disturbed by the sudden convergence of uncalculated or even catastrophic forces. The attempt at disruption perhaps began with this or that indivdual, but it soon spread to the community. Bishop Butler, pacing his garden at Bristol in the 18th century, is reported to have suddenly broke out thus, "Why might not whole communities be seized with fits of insanity as well as individuals? Nothing but this principle, that they are liable to insanity, can account for the major part of those transactions of which we read in history". The present day *karanavan*, with his ideas of traditional authority, powers and privileges and with the gradually developing instinct of natural love and affection towards his wife and children, finds himself incapable of honestly discharging his duties. The idea of individualism has rightly or wrongly permeated the minds of very large number of young men in the community. This strikes at the root of the system and is a factor to be considered. The absence of respect for the *karanavan's* authority on the part of the *anandaravars* on the one hand and the violent changes gradually worked into law by our courts, restricting his rights and powers without correspondingly relieving him of his duties and burdens on the other, have rendered his position really difficult and unattractive. Thus the reasons that favoured the system have now considerably diminished. It does not appear to me therefore possible in the existing conditions of *marumakkathayam* life to defend that system with success.

We are called upon to decide how best we should grapple with the situation. That a change is needed is conceded on all hands. That change surely cannot be one of reversion to the old order of things. The change to be now successful and workable must be such as to move with the onward march of the society, one which will satisfy and yet stimulate the progressive idea of individualism in thought and action. This could be achieved in the new order of things only by adopting a system which, in the end, will completely eradicate the existing body of laws governing the constitution of the *tarwad* and the devolution of property. The two main factors in the constitution of the Nair *tarwad* are the system of inheritance through females, and the impartibility of its family properties. It is exactly these that at present conflict

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Padmanabha Pillai.]

with the notions of the progressive section of the community. The changes needed therefore are a system of inheritance through males and partibility of properties.

But that is not a very simple affair in itself. There is still a large volume of opinion in the country favouring the existing system. It is difficult to know which school of thought is now in the majority in the country. Those who hold that opinion are not to be blamed for it. They are born and brought up under that system. They are trained and hence feel as *marumakkathayees* and they also find some virtue in the system. Their traditional habits and ideas are strongly opposed to any change and I do not think that this again is a matter that can be neglected.

I may at this moment say that personally I do not believe in the *thavazhee* partition advocated as a solution. The idea that the demand for separation is by groups —the near from the remote — is baseless. *Thavazhee* partition does not saisfy the ideas of indvidualism and *makkathayam*. It would not in any way reduce the existing evils of the *marumakkathayam* system but would only aggravate them.

Individual partition is an excellent principle, and nothing can be clearer than that in a democratic age land should be in many hands. In that way only can it exercise its legitimate influence and secure itself from injustice. But to allow a sudden and indiscriminate division of all the properties without providing the necessary safeguards is, to my view, beset with dangerous consequences. Whatever may be the opinion of the members of the *tarwads* concerned, I am decidedly of opinion that individual partition cannot but be advantageous to the rich Nair *tarwads* of the State. But I am at the same time inclined to the view that, if the properties belonging to poor Nair *tarwads* are to be individually and suddenly divided, it will be disastrous to them. About 80 per cent. of the Nair *tarwads* of the State are comparatively poor and the share that will go to each member of those *tarwads*, if properties are divided individually, will be uneconomic. This is not a country which is, or which is soon going to be, very much industrially advanced, and which would therefore have much by way of openings for employment; and the members of the community are not so far trained or accustomed to any industrial habits. The statement given in Appendix IV at page 74 of the *Marumakkathayam* Committee's report very clearly shows that the Nair and Samanta communities alone showed signs of decline while all the other communities, including Ezhavas, showed signs of great progress. The *marumakkathayam* system alone cannot therefore be said to be responsible for this. The truth is that the Nairs are habitually idle and they are not very industrious. The cases of Christians and Tamil Brahmins are very often cited to prove the beneficial advantages of partition in this country. Granting that partition has proved only advantageous to these communities, still I am afraid that the analogy is false. These are communities which have

LIBRARY ARCHIVES Kerala Legislative Assembly

been enjoying partition and *makkathayam* for ages. In their case, what we see now is a result achieved after centuries of experience. We are only trying to make a beginning. Further, the Christians and Tamil Brahmins are very industrious people and there are ever so many benevolent organisations to look after their interests. I ask, in this connection, how many beneficent or friendly societies, how many missions, how many schools, how many banks and how many *samuhams* there are in the State that do, or that can do, real service to the advancement of the Nair community.

It may not be out of place if I refer here to the considered opinions presented to the British Parliament on an allied topic by the different British diplomatists accredited to the various countries of Europe, who were asked in connection with the enactment of the Small Land Holders' Act of 1892 to study with reference to the conditions existing in those countries and report on the economic effect of having a large number of small or peasant proprietors of land in a country. The opinions expressed by all of them converge to the same conclusion that it is not in any way economically advantageous. It was shown that, in that portion of the Austrian Empire where peasant properties are large and are seldom divided, there is a far higher level of cultivation and a far smaller proportion of debt than in the part where the system of small farms and constant division prevails. In the German Empire where the habit of letting farms was seldom practised except on princely estates, and where an overwelming majority of the estates were managed by their owners, there was decisive evidence that the farmers who suffered least by the long period of depreciation were owners of what are termed middle-sized farms which range from about 18 to 370 acres. In the smaller countries, the evidence of rapidly increasing debt was very great and in some of the countries where peasant proprietorship is most extended, the distress has been extremely acute. In Belgium, almost the only peasant proprietors who were not poorer in 1890 than in 1880 were said to be found among the very smallest and poorest who employed no hired labour and cultivated their own land with their own children. In the Netherlands, the statistics for the five years from 1883 to 1887 showed that during those years the unredeemed mortgages of peasant proprietors nearly doubled, having risen from £ 80,000 to £ 1,58,000, and that, while the number of very small farms not exceeding 2½ acres had increased, there had been considerable diminution in the number of rent-paying farmers. In Switzerland, as in nearly all other countries, there had been a rapid increase of the debt of the peasant proprietors during the 30 years covered by the report, and that, in the opinion of the author of the report, if not checked, is sure to seriously endanger their position. Much the same thing was said in the case of the Scandinavian countries where the system of peasant proprietors is popular and is encouraged by several special laws In Denmark, the debt during the 40 years considered in the report had increased from about 25 to more than 50 per cent. of the value of the landed properties. "According to all past experience", says Lecky,

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Padmanabha Pillai.]

"peasant proprietors rarely succeed except when they possess something more than an average measure of industrial qualities". He believes that a peasant proprietary called into existence suddenly, with no discrimination in favour of the better class, in a country where industrial qualities are very low and where the strongest wish of the farmer is either to divide his farm among his children or to burden it with equal mortgages for their benefit must eventually lead to economic ruin, to fatal subdivision and to crushing charges on land. Looking back, one can at once see a piece of wisdom in the old Tudor legislation annexing four acres of land to every agricultural cottage.

The women in our community are also to have a share in the property; and as such, it is only natural that partition, when allowed, would be frequent. I am very much afraid of the ultimate issue of the attempt, in defiance of all economic principles, to bring into existence a tremendously large number of uneconomic holdings suddenly in a country where there is not much of scope for employment and in a community not possessed of, or trained to, any industrial habits. To my mind, it cannot be advantageous either to the community or to the State. The chances are that small holders of lands in the community will be replaced by others who are accustomed to more economical habits and a lower standard of comfort. It is claimed that individual partition will give credit to individuals and thus afford scope for economic improvement. That may be true with rich *tarwads* and with those industrially inclined. On the other hand, in the case of poor *tarwads*, it will, besides taking away the little credit that these *tarwads* in jointness now possess, retard their economic progress.

Another matter of economic importance to be considered in this connection is the question of house-property. To every Nair *tarwad* rich or poor, the house is a main item of its property. That is brought about by the *marumakkathayam* system itself. Now, in your scheme of individual partition how are you going to dispose of these houses? This is a matter that is not to be brushed aside as one of detail. Is anybody going to take the house for his share of the family properties? I fear not. Even in case one member can now be found to take the house for his share, I suppose he may not be in a position to maintain it any longer. I also do not think that the several members of the *tarwad* will be inclined to part with the houses to any one member unless it be for his share. The existing houses cannot advantageously be removed and built up into several small houses either. Thus in the case of a sudden and individual division of properties, an enormously large number of Nair houses will be on the market, and the supply of big houses being very much more than the demand, the consequence will be ruinous to the community. There is yet another side of it also to consider. With individual partition, there will be need for at least a lakh of new, though smaller, houses. How are you going to meet the demand? How is the community to find funds for this?

LIBRARY ARCHIVES Kerala Legislative Assembly

The question of family settlements already effected is also not a matter that can be lightly dealt with. There are cases where *avakasis* or *koottukars* only distantly related to certain *tarwads* have been allowed to take part in the settlements effected in these *tarwads* with a view to prevent escheat. If the arrangements made under these settlements were to be undone at one stroke and properties would be made divisible among the parties to the deeds, the real owners would lose considerably. There are also cases of *nischayaptarams* where some branches, having a greater number of members particularly women, have agreed for the time being to take less than what is actually due to them under the notion that the other properties also will revert to them when the other branches, possibly consisting of only one or two male members, become extinct. It would not, in any way be fair to treat these settlements as effecting division between these branches and then allow a partition of the branch properties among the members of the respective branches.

The position of Nair women is another important matter that has to be considered. I listened with interest to the view expressed by my friend Mr. P. K. Narayana Pillai as president of a Nair conference held the other day at Quilon on this point. I must, with respect, say that I still remain unconvinced by the arguments advanced. I am willing to admit that there are some women in our community who are able and educated enough to stand on their own legs. I am also willing to grant that all our women are capable of being successfully trained to look after themselves. But my experience so far does not enable me to conclude that the major portion of our women are now able to take care of themselves if suddenly left to their own. They have all along been trained to feel that there is always somebody else to mind them; and I sincerely and strongly feel that they should, until they get a better training, be protected not only from others but also from their own follies.

It is explained generally that, when individual partition is allowed, *makkathayam* will follow as a matter of course and that the females will be taken care of by their husbands and fathers. I am not so sure of that. I do not believe that *makkathayam*, if not linked by legislation with individual partition, must necessarily follow it. There are thoughtful people in the country who advocate *makkathayam* before individual partition. To my mind, the two must start and proceed together. There is no doubt that a large number of Nairs prefer *makkathayam* to *marumakkathayam*; but I am inclined to think that between responsible *makkathayam* and irresponsible freedom they would prefer the latter. That is only natural. We are trained so far to that sort of mentality. I shall merely cite one instance here to support my position. The subjects committee of the Quilon Nair Conference held the other day recommended a proposal that the property obtained by each person in a partition of family properties should partake of the nature of the ancestral properties under Hindu law.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Padmanabha Pillai.]

The gentlemen present at the meeting—almost all of them advocates of *makkathayam*—could not agree to that mild proposal. I am strongly of the view that a share of family property could under the existing conditions of the community be given only with a responsibility attached to it—the responsibility of a *makkathayee*.

Any measure, Sir, to be enacted must therefore be one that will recognise these facts and face these realities. The measure must be one that will satisfy the legitimate aspirations of the progressive section of the community and also recognise the not altogether ill-founded fears and sentiments of the conservative section. The measure, while aiming at *makkathayam* and individual partition as the goal for all in the community, must be such as to effect the transformation *gradually*. The community should be allowed to adjust itself to the new conditions without violence and with the least possible inconvenience. To make it plainer, I am for a permissive measure which will enable those who so desire to remain under the existing system and which will at the same time allow any major Nair to become a *makkathayee* and separate from his *tarwad* taking his share of the family properties. Those who claim partition can do so only as members of a *makkathayam* family, and once a person elects to be a *makkathayee*, he or his progeny should not have the option to go back to the *marumakkathayam* system. The share which a man or woman gets from the *marumakkathayam tarwad* must form the nucleus of the *makkathayam tarwad* and should be equally divisible amongst them and their children. For this purpose, the State must maintain a marriage register for the community. Any marriage performed in accordance with the custom obtaining in the community may be registered on the parties thereto attaining majority. That must of itself operate as *makkathayam* and entitle them to claim partition and separate from their *marumakkathayam tarwads*. Such a measure, besides respecting the sentiments of the two sections in the community and safeguarding the interests of women and their progeny would, in the case of division put at least two shares together to work a family on. The better classes alone can be expected to claim partition under the circumstances and there can be, in their so doing, no danger either to them or to others who look up to their fate to follow them. The transformation will be gradual and the community shall, in the light of new conditions, have time to adjust itself. Man, if left to follow his true nature, loves good and hates evil. He would be guided by the dictates of reason if only you let him alone and did not confuse his mind. He would then get a clearer view of his true interests and that would contribute largely to the proper regulation of his life. I am not unaware of clause 29 of the bill which is intended to give an option in the matter of partition. That provision is thoroughly inadequate for the purpose. In the first place, it leaves the option to *tarwads* and not to individuals. In the

LIBRARY ARCHIVES Kerala Legislative Assembly

second place, the opinion of a single member may override the opinions of all others in the family, however large their number may be. Further, what the clause aims at is to declare all Nair *tarwads* partible and leave an option to such of them as so desire to back out of the provisions relating to partition in case all the adult members agree to that course. I am aware that my scheme is open to one main objection that it will create two systems in the community. That state of affairs can last only for some time and I do not feel it can in any way be injurious to the community.

In regard to the other portions of the bill, I do not propose to go into detail at this moment. Several of the provisions have to be wholly recast or modified in the light of the view that I take regarding partition and inheritance, and also in order to give effect to the real aims and views of the community.

MR. N. RAMAKRISHNA PILLAI: Sir, I am glad an opportunity has arrived for the revision of the law of the Nair community in Travancore. The importance of the change in the law contemplated by the bill is only equalled by the imperative necessity for such a piece of legislation. The whole Nair community throughout Travancore is looking forward to the result of the discussions on which this Council has now entered; and it is but just to respectfully remind the House that a very heavy responsibility is now cast upon its shoulders in judging of the merits and demerits of the contemplated measure. The agitation to be relieved from the trammels of the existing system of *marumakkathayam* law, commenced several years ago; but the progress achieved, though momentous and considerable, has been small in comparison with what is now proposed. Beyond recognising the rights of the wife and children to a certain extent, the enactment now in force has not been able to afford any relief against the rigorous enforcement of a system of law which has been evolved by the courts out of principles deduced from other systems of law and rendered rigid by the strictest application of the principles logically and systematically worked out by them. The struggle to free themselves from the tyranny of the joint family system, in which it has been freely said that every man's duty is in perpetual conflict with his private affections and interests, has been going on for several years; but the effort to shake off the fetters has been nipped in the bud and rendered abortive through the action of the law in preventing the disruption of *tarwads* by partition. The great majority of the people are thus chained to a system from which they are hopelessly prevented from escaping. Almost the first request of the Nair members of the Popular Assembly was for the enactment of a law of partition in *marumakkathayam tarwads* as is evidenced by the representation made by them in 1081 and renewed in 1082 and 1083. The *Marumakkathayam* Committee appointed by Government reported that there was unmistakable evidence of a tendency towards disintegration on the part of Nair *tarwads* and that the corporate existence of *thavazhees* was morally and economically

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Ramakrishna Pillai.]

injurious to the Nair community. The question referred to the committee concerned only with *thavazhee* partition and not partition between individuals; but the arguments in favour of division and non-division were elaborately considered by them in their several aspects and, while reporting in favour of *thavazhee* partition, as that was the only course open to them, they were decidedly of opinion that the "reasons for partition considered" by them "were applicable to individual partition rather than in groups". But, unfortunately, the conservative element, though small, was in power, and the whole question of partition was dropped in spite of the warning addressed by that eminent statesman, Sir. P. Rajagopalachari, who was then at the head of the administration. There were also those who thought that any law of partition less than that of division between individuals was useless and therefore unnecessary. Thus while a large majority of the people (88 per cent. according to the committee's report), were praying for a law of partition, the legislature enacted a law of marriage; and the all-important question of partition was put off. The agitation has since then continued with more earnestness and force and there is at the present day no other problem concerning the Nair community requiring speedier solution at the hands of this Council than this question of partition, about which much has been said and written with force and feeling and about which there is more unanimity of opinion in the country than is generally supposed or acknowledged.

In dealing with a question of such gravity and importance, it is impossible to refer to all or most of the aspects of that question within the limited time at our disposal. The disadvantages of the existing *tarwad* system and the necessity for a law of partition in *marumakkathaya tarwads* have been discussed and commented upon in Government reports and various other publications and have been the subject of discussion by the public for such a long time that no useful purpose will be served by going over the ground again. I do not also propose to enter into a discussion of the economic and other consequences of a law of partition as applied to *marumakkathayam tarwads*. I shall only place before this House one or two points which seem to me to be decisive in the discussion of the question, so far as the legislature is concerned, whether the principle of the bill in respect of partition should be adopted or not.

The first and the most important point is that the people, or at any rate a very large majority of them, want it and have been praying for a law of partition. The disintegration of the family is going on with the evolution of society and the activity of economic forces. Disintegration is inevitable and the tendency has unmistakably manifested itself towards individual ownership and is bound increasingly to manifest itself in that direction. In spite of the fact that the law has been compelling people to act up to the theory of the *marumakkathayam* law, the disruption of *tarwads* has been going on in several ways. Formal

LIBRARY ARCHIVES Kerala Legislative Assembly

deeds of division and separation of residence and of enjoyment are matters of daily occurrence. It would appear from the report of the *Marumakkathayam* Committee that these disruptive actions are steadily on the increase. In the face of these sure indications, the courts have also at least been compelled to recognise certain elements of disruption in the *tarwad* system. The recognition of separate acquisitions and the extension of the right to separate maintenance are instances in point. Another inroad on joint ownership was made by the constitution of *makkathayam* sub-*tarwads* and the recognition of the right of the sub-*tarwads* alone to gifts to the exclusion of the general *tarwad*. The courts have also been compelled to hold that the branches of a *tarwad* living and enjoying properties for a number of years must be regarded as divided in law. Finally, the Nair Regulation of 1088 gave statutory recognition to this tendency towards disruption by enacting that the wife and children are entitled to a share in the earnings of a member of the joint family. Sure indications of the course the community has adopted are also furnished by the volume and nature of the litigation and the numerous instances of family arrangement and partition that are daily taking place in Nair *tarwads*. The disruption of *tarwads* is bound to go on in the direction indicated; and a system which ignores and forbids this natural process is surely mischievous and absolutely unjustifiable. With the advance of education, *marumakkathayam* is becoming hopelessly unworkable and the great majority of the people naturally desire to have a modification of the law of joint ownership. The courts are bound to administer the law once settled by them; and unless the legislature takes note of the warning given and steps in to assist the tendency so unmistakably manifested among the people, the disintegration, instead of being a healthy and natural process, is sure to produce ruinous consequences in its way. Partition has become very common in Nair *tarwads* and is steadily increasing; but in almost all cases this is brought about after long quarrels among the members and considerable loss to the family on the whole. It is the duty of the legislature to assist this natural process and make its working smooth instead of allowing the existing law to take its own course and compelling the observance of that which the people do not want. There is absolutely no indication whatever that the joint family system has any chance of surviving or of peace ever entering into the joint family home.

While courts have in recent years been obliged to recognise several disruptive elements in the joint family system, they have not been able to relax the rigour of the fundamental rule of the *marumakkathayam* law that *tarwad* property is impartible except by the unanimous consent of all the members. And indeed courts will find it impossible to get over a rule so well accepted and admitting of no exceptions. This is the existing law. The law appears to have been otherwise in Travancore and Cochin and also in Malabar. Till about the year 1857, the Malabar courts used to give decrees for partition; and, even when the doctrine of impartibility was introduced, that doctrine was not based upon the evidence of any custom or usage of the people but was the

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Ramakrishna Pillai.]

result of the enunciation of a principle by a European judge. It appears also clear that the courts in Travancore, like those in Cochin and Malabar, used to grant decrees for partition till about the year 1870 as will appear from references to instances found in the Law Reports. The doctrine of impartibility was introduced into the Travancore courts by English-trained judges from the British Indian courts. The course of the decisions till the year 1871 also furnishes instances of the fact that partition was allowed by the Cochin courts and was largely resorted to by the people. The judgment of the Cochin Chief Court printed at the end of the report of the *Marumakkathayam* Committee refers to the practice in Cochin as agreeing with that existing in Travancore. This judgment is of the year 1046. But subsequently the principle of impartibility was imported into Cochin and adopted as the law. It is thus hardly above half a century since the doctrine of absolute impartibility, enunciated by the Madras High Court, found its way into Travancore. The result was that the judges entered upon a discussion of theories as to the origin and principles of the *marumakkathayam* system, extending them to their logical consequences, instead of trying to find out what the custom or usage was with respect to any particular question coming before them for decision. The introduction of the English system of laws and the uniform and rigorous application of rigid legal principles in the decision of cases thus prevented the formation and recognition of any custom at variance with the law, and brought about the present state of affairs from which the community is struggling in vain to free itself. As truly observed by Mayne, "It is certain that Malabar *tarwads* would long since have broken up into families, each headed by a male if our courts had allowed them to do so". It is also worthy of note that a proposal for individual partition was actually suggested by that eminent statesman Sir. T. Madhava Rao, as will appear from the Administration Report for the year 1040. The courts are now powerless to set matters right and the only course open is for the legislature to remove the fetters imposed by the law and retrieve the harm unconsciously brought about. For these and other reasons, I support the principle of individual partition adopted in the bill.

Another principle which needs reference at this stage is the rule of intestate succession enunciated in the bill. The bill makes provision for succession to the self-acquired and separate property of a non-Nair male and fixes the share of the wife and children at one-half in case the intestate happens to be undivided. It would have been more reasonable and in consonance with justice to allow the wife and children to inherit the intestate's property along with the children, if any, by his caste-wife, and thus secure equality of right in the matter of succession by the wife and children. Why the succession should be limited to half the acquisitions of the intestate does not also appear to me to be clear. What the nature of the separate property is which a non-Nair can have in a state of non-division also needs some explanation. In the case of those who follow the *Mitakshara* and other allied systems of law,

LIBRARY ARCHIVES Kerala Legislative Assembly

self-acquisitions are always tainted with the touch of co-parcenary property and the strong presumption in favour of the acquisitions being made with the aid of joint funds makes it extremely difficult for self-acquisitions being made available for the purpose intended. The result of restricting the inheritance to self-acquisitions alone will be to make the provision for a share in the inheritance almost illusory. If creditors are allowed to proceed against the share of such an intestate in his co-parcenary property, I do not see any reason why children should not be allowed to get a share in such property. The rules of inheritance must be based on some principle and I would therefore suggest that the wife and children should be enabled to share, equally with other children, if any, of the intestate, in all his property, whether ancestral or self-acquired. I may be permitted to observe that there is absolutely no justification for exempting in any manner any person from the obligations of marriages which have long ago been declared to be valid. In the decision reported in 20 T. L. R 65, it was held by one of the judges that the marriage of a Nambudiri male and a Nair female was one prohibited by the personal law—the Hindu law—by which the Nambudiri at least, if not both the parties, was governed. But this prohibition has long since been removed and such marriages have been declared to be valid under the law. What is the justice then of withholding the right of the children to share their father's estate? A *marumakkathayam* woman's children succeeding to a *makkathayam* father's property is not unknown to the law and such a double system of succession has also been upheld by the Travancore High Court. The provision that, in the case of the woman dying without any lineal descendants surviving her, one-half of her whole property goes to the husband, also makes it clear that no distinction should be made between self-acquisitions and ancestral property in the case of non-Nair males. The bill further restricts the inheritance to self-acquisitions alone in cases where there are no undivided heirs of a non-Nair male. I would therefore strongly urge that no distinction need be drawn between self-acquired and ancestral property in regard to succession by the wife and children in any case.

It appears to me that the whole chapter on intestate succession needs reconsideration and rearrangement. I do not propose to say anything more than this at the present stage.

There are other portions of the bill on which discussion could be usefully carried on. The bill seeks to enforce monogamy in the case of Nair males; but in the case non-Nair males monogamy is enjoined only in cases of marriages of Nair females. Whether monogamy should be enforced and if so whether it should be enforced in all cases without distinction, are questions which need further consideration. In regard to the question of divorce, except removing the maximum limit fixed in respect of the compensation payable by the husband, the bill makes no departure from the existing law. Whether divorce should not be made more difficult is also a question which needs further consideration.

In respect of *tarwad* management, elaborate provisions defining the *karanavan's* duties have been introduced into the bill. I do not see the necessity for these rules when the aim of the bill is to strike at the

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

root of the whole *tarwad* system. I would, however, like to see some provisions made to safeguard the interests of minors and incapable persons at the time of partition.

I do not propose to add anything more at this stage in regard to the other provisions contained in the bill. With these remarks, I support the principles underlying the bill.

MR. T. K. VELU PILLAI: Sir, this is one of the most difficult measures that have ever been, or ever will have to be, considered by any legislative assembly in the world. The changes in the existing laws of the Nair community which are contemplated in this bill are the outcome of a general, if not universal, awakening, the natural consequence of altered environment, and a desire on the part of the community to imitate the laws and usages of other peoples who live under systems of law which appear to be more in accordance with the dictates of human nature. The matriarchal *tarwad* was the ordinary type of a Nair family and that *tarwad* was perhaps one of the chief institutions which enabled the Nairs of former days to achieve great results no less in war than in peace. The members of the community were born in such a system, they were bred in it and they were not dissatisfied to die in it. They maintained a high degree of family honor and marital relationship with a striking reciprocity of conjugal faithfulness and filial affection. The landed aristocracy and the Royal Family followed the same usages and the King was the key-stone of the ancient arch of a great social system. With the avenues of intercourse with other peoples which were opened to them by the *Pax Britannica*, a feeling of unrest and a desire for imitation began to haunt the minds of men. The ideas of individualism which were spread broadcast throughout the community with the advance of English education ushered in a new era of social progress. The simplicity of life which was one of our dearest possessions yielded to a hankering after the richer and more varied conveniences and comforts of western experience. The wife became the central figure of the home in the place of the mother. The sister's husband became in effect a remoter relation than the wife's brother. The *karanavan* leased out the *tarwad* properties to strangers in order to escape the numerous demands of unprofitable agriculture. The nephew had nothing to do and became indolent and obstructive. War was the Nair's profession, but there was no scope for it under the new political conditions. Employment in Government service ceased to be his monopoly and his share in it made rapid strides downwards. The old traditions of family prestige lost all their force and a sense of helplessness and irresponsibility began to steal upon the community. The decline affected the physique no less than the economic strength of the Nairs. The late Mr. Thanu Pillai, one of the most talented of Travancore's sons, observed in the course of a public lecture that the Nairs had deteriorated so far that, if in any part of the country a stranger saw a well-cultivated field or a well-ordered garden, he might

LIBRARY ARCHIVES Kerala Legislative Assembly

with impunity conclude that it did not belong to a Nair, while on the other hand a neglected field and a wasted garden were inevitable attributes of Nair ownership. Dewan Bahadur Govinda Pillai who, happily for us, still retains his health and his talents and is regarded as our foremost citizen, expressed the idea in a different manner but with equal directness and force. "If some future historian", said he, "were to write the history of the Nairs, he would describe them in a short paragraph as an interesting community which inhabited the south-western corner of the Indian Peninsula whose members wore front tufts and prided in litigation as their only business."

This kind of stock-taking opened the eyes of the people. The Nair *samajams* which were inaugurated under the fostering care and loving guidance of the late Mr. C. Krishna Pillai, whose life was one ordeal of duty for the uplift of the Nairs, were instrumental in carrying conviction to the minds of the members of the community. It was discovered that the laws of marriage and family-management and inheritance were a dead-weight in the way of progress, and legislation of a suitable kind was loudly demanded. The members of the Sri Mulam Popular Assembly memorialised Government about the necessity of a legislative enactment, and Mr. P. Raman Tampi, a member of the Legislative Council, sought permission to introduce a marriage bill into the Council. I do not intend to trace the history of the labours of the *Marumakkathayam* Committee or to dwell in detail on their valuable work. But it may be stated that, although legislative sanction was accorded to Nair marriages and the devolution of one-half of the Nair male's property to his widow and children, the provisions relating to partition, even the mild remedy of *thavazhee* partition, had to be deleted from the bill. In about five years after the passing of the Nair Regulation, I had the privilege of introducing an amendment bill; but it was thrown out by an official majority. My friends Mr. K. Parameswaran Pillai and Mr. Subba Aiyar on the other side of the House will remember that, although I appealed to Government to permit official members to vote according to their conscience, that permission was not given. Sir, the agitation on this question is a good example of demands becoming louder and more determined where compliance is indefinitely deferred. Soon after my bill was rejected, Mr. Muraniyil Govinda Pillai, a sober, sedate, and well-informed elderly gentleman, whose untimely death we deeply deplore, came forward with a serious proposal for a law of individual partition. Even some of us younger men were taken aback at his intrepid courage. But, Sir, to-day we hear the cry of individual partition raised from the press and platform, voiced forth by a very large portion of the community throughout the length and breadth of Travancore.

I congratulate the mover on his opportunity; but I cannot congratulate the Council or the Nair community on all the provisions of the bill or some of the general principles underlying them. The bill, Sir, is a little illogical and somewhat incomplete. In the statement of objects and reasons appended to the bill occurs a clear reference to "the pressing demand of the community that property ought to descend

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

in the male and not in the female line". Now, if that be the chief object of the bill, the elaborate definitions of '*marumakkathayam*, '*karanavan*', '*anandaravan*' and '*thavazhee*' are out of place. The foundation for *makkathayam* is the stability and permanence of the marriage tie. Children are entitled not merely to a dole of maintenance allowance, but the care of both the parents and the safety of the home. The permission granted to a married couple to separate without sufficient reasons, sometimes at the whims and caprices of excitable parties, subject merely to the elastic rule of reasonable compensation to the respondent, is not the best soil for the growth of *makkathayam*. The *Marumakkathayam* Committee were desirous of granting freedom of divorce; but according to their scheme, the children born of unlucky marriages had their place in their own *tarwads*. The indissolubility of the marriage bond among the Catholics and generally among Hindus and Christians is a bulwark against the forces of disintegration. The difficulties in the way of securing divorce even in Protestant countries is another proof of the intention of legislators that permanency of marriage ought to be the normal condition of healthy social life. Marriage is more a sacrament than a contract; and I think that, with all the attractions of the theory of freedom of contract and individual option, divorce must be made difficult and rare, to be allowed only in exceptional cases. The present bill has followed the Nair Regulation in giving the power to civil courts to decree compensation to the respondent after making an enquiry into the position, means and circumstances of the parties. This means that a party who prays for dissolution of marriage on account of, say, adultery or a loathsome disease on the part of the other party, will have to purchase the right at a high price, and the courts will not be free to consider the adequacy or otherwise of the recompense. The publicity of divorce proceedings will be a deterrent to persons who indulge in a butterfly-like love of variety; and although individuals might occasionally suffer, it will add to the safety of the social organisation. The difficulty of securing an order of divorce through court is not so hard as the prevention of re-marriage or widow-marriage; and yet the latter rule is being preserved in the legal systems of most communities. *Makkathayam* is neither possible nor profitable so long as the marriage bond is allowed to be shaped by a unilateral renunciation or by a so-called agreement between the parties.

Before I proceed to a consideration of the other topics, I wish to offer a few remarks on the rule of monogamy contemplated in clause 10 (*a*) and the allied principle in the next sub-clause. There is nothing so erroneous in legislation as to build upon the practices of other races following different religions under dissimilar conditions of ethical and economic environment. Monogamy is essentially a Christian virtue. It has very much to be said in its favour; but, at the same time, the practice of Nairs, Hindus generally and other oriental peoples cannot be condemned. The *Marumakkathayam* Committee

LIBRARY ARCHIVES Kerala Legislative Assembly

were, it may be mentioned, in favour of compulsory monogamy. They have given so many as seven reasons to show that the principles of strict monogamy should be accepted. These reasons are purely theoretical and do not support their conclusion. The growth of the population, the diminution of the rate of infantile mortality, the cohesion of family life, the cultivation of love, the preservation of life in old age, are all of them compatible with the existing practice of the community, while the difficulty of maintaining a number of wives and innumerable children is a sufficient preventive to unrestricted passion. The liberty to take more wives than one does not always encourage polygamy and this is shown by Amir Ali in his famous book *The Spirit of Islam*. The *Marumakkathayam* Committee themselves admit that 95 per cent. of Indian and 98 per cent. of Persian Musalmans are monogamists. Polygamy is very rare among Nairs in Travancore; but the people are, however, not in favour of a law prescribing monogamy by doing away with personal liberty. This is evident from the fact that only 395 non-graduate witnesses examined by the committee were in favour of enforced monogamy while 410 were against it. And I also fail to see the wisdom of dividing witnesses into two classes *viz.*, graduates and non-graduates. I must point out that, even among graduates, those who had been nurtured on the literature and ideals of western countries, so many as one-third were opposed to compulsory monogamy. It is interesting to see the committee quoting the *Ramayana* in support of their position. It is submitted that their interpretation of the text was incorrect. The statement of Sri Rama that every man should have one wife and he had one already does not mean that no man should be permitted to have more than one. Considering the unbounded respect Sri Rama entertained for the traditions of his Royal House and the actual practice of his beloved father who had three wives, not even a casual critic can maintain that the great *Avatar* disapproved of polygamy. Sir, to an ordinary Hindu who cannot afford to dispense with the *Puranas* and the *Itihasas*, the conceptions of Lord Siva with Parvati and Ganga, Sri Krishna with Rukmini and Satyabhama, and Subrahmanya with Valli and Devayani do not appear to be immoral or outrageous. I am not in favour of penalising the Hindu Gods and engendering disgust of religious ideals and usages by incorporating unnecessary and erroneous principles in the eagerness to accept notions which are not familiar to the vast bulk of the community. Personally, we are all monogamists in theory and practice, but this is not a matter for compulsory legislation.

I have discussed the question at some length because I cannot consider the subject of Nair marriages without recognising the inter-relation of the Nairs with other communities which compose Malabar society. The Nambudiries and Kshatriyas and numerous other castes are unable to perform any civil or religious act without the association and assistance of the Nairs—from *Jatakarmam* to *Savasamskaram* and *Sraddham*. There are several old and respectable Nair families where the women are not allowed to contract marriages with Nair males even though they be of the highest caste. This state of affairs requires change. An identity of caste, social relationship, religious observances and other interests is

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

indispensable to the dignity of the home and the mutual affection of husband and wife and children. I have come across cases of mixed marriage which are not conducive to the self-respect of both the parties; and in one case I have personal knowledge of a patrician father avoiding the touch of a young boy, his Nair son, in spite of unmistakable facial resemblance and cherub-like beauty and innocence. Conditions like these are not likely to improve the tone of Nair manhood and womanhood; and the sooner these fugitive connections are discontinued, the better it will be for the community. And when the *tarwad* is broken up and forgotten the Nair son of a non-Nair father will belong to no family, as he would not be accepted within the folds of his father's family. But at the same time, instances are not wanting in which Brahmins and Kshatriyas accord the most honorable treatment to their wives and children who belong to the Nair class. The male members of the reigning families of Travancore and Cochin choose their consorts from the community and are greatly attached to them throughout life. I refer to the above circumstances to show that these customs relating to inter-caste marriages will have to be permitted for some time. Therefore, I do not ask for a clean slate. I do not demand an entirely new scheme of social reconstruction all at once. But I must raise my serious objection to the retention of sub-clause (*b*) of clause 10 which establishes the illogical proposition that, while the non-Nair husband can have any number of caste-wives according to his personal law, he is prohibited to have two Nair wives at the same time. Evidently, the object of the bill is to compromise certain sections of opinion which is based on the convenience of other communities. When the principle of Mr. Raman Tampi's bill was being discussed, one of the members of that Council said that the feelings of other communities should not be wounded and that their rights should not be infringed. The illustrations he addueed were not happy. If a non-Nair lost his caste-wife, said he, at an advanced age, he would have to marry a young girl of 10 or 12 in his own community with the prospect of leaving her soon as a child-widow and it was argued that the laws of the Nairs should therefore be kept in *statiio quo*. It reminds one of Huxley's argument that a tiger has a natural right to eat a man, but if he may eat one man he may eat another, so that a tiger has a right of property in all men as potential tiger-meat. Mr. Subba Aiyar's reasoning led to an exchange of rhetoric on both sides. Sir, when it is realised that men and women die in all parts of the world and not merely in the Kerala country and when communities get on very well without such convenient subterfuges, the hollowness of the argument will become obvious and one could understand Mr. Tampi's remark that the best way of avoiding this evil was not by making scapegoats of the Nair community.

Closely associated with this subject is the right of the Nair widow and children over property left undisposed of by a non-Nair husband or father at the time of his death. I am aware of the bogey of personal law. I am prepared to concede that, under existing usages, a Nair son

LIBRARY ARCHIVES Kerala Legislative Assembly

of a Nambudiri cannot be considered to be a member of the latter's *tarwad*. The father himself has no separate ascertainable interest in the property of the *tarwad*. But with regard to self-acquired or separate property, the case is entirely different. This species of property is a creation of the courts, and the legislature is competent to interfere with the course of its devolution in the interests of society. Sir, the members of the non-Nair communities who have the privilege of entering into marriage with Nair women are not so rigid as some of their *soi-disant* advocates. The State of Cochin has proportionately more Malabar Brahmins than Travancore, and inter-caste marriages are more numerous there. Yet several leading Brahmin gentlemen did agree to be saddled with the same responsibilities as the Nair husbands. The Nambudiries, Tirumulpads and others are now endeavouring to encourage marriages between men and women of the same caste in order to solve their own problems. His Highness the Maha Raja of Cochin has accepted the justice of the right discussed above in the Cochin Nair Regulation; and the British Government has not interfered with the matter on the ground of imaginary violations of somebody's personal law. The bill makes the Nair wife the heir of her non-Nair husband for certain purposes, but does not confer a corresponding right on the latter when the wife predeceases the husband. It will be more logical and more in keeping with our self-respect if reciprocity is allowed. I may, however, inform the House that, as the right to make wills is a recognised one, the non-Nair husband may be sometimes tempted to practically disinherit his wife and children. Section 13 (B) of the bill will not be of any use in the face of such a possible contingency. It is love and affection that is more important than the law.

I do not mean to deal elaborately with the chapter on the management of *tarwads*. The direction to make the *karanavans* keep accounts of income and expenditure is no doubt enchanting, but hardly practicable. It is not backed by sufficient sanction to enforce obedience, while the enunciation of the obligation will embitter feelings and generate disputes which will be fomented by the husbands of female *anandaravars* and their partisans. The majority of *tarwads* do but carry on a hand-to-mouth existence which affords little scope for day-books and ledgers. The bill is one-sided in that it follows the fashion of indiscriminate curtailment of the *karanavan's* powers without requiring any obligation on the part of the *anandaravars*. There is no use in burning coals in the boiler of a railway engine if there is no intermission in the effective application of various brakes which prevent the motion. As Dr. Kunjan Pillai observed in the Council some three years back, the conditions imposed on the *karanavan* are so severe that *tarwads* will suffer not from mismanagement but from want of management, thereby tending to their breaking-up as a matter of necessity.

The drift of the bill is assuredly towards *makkathayam* and the section relating to individual partition removes all doubt, however much it may be desirable to preserve the impotent effigy of a common

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

karanavan. The courts have attempted to prevent dismemberment of *tarwads* but they have not been successful. The inroads allowed and encouraged by judicial legislation are having their full effects which are supplemented by the growing demands of the community. Sir, there is no mistaking the progress of Malabar society. People want their sons and daughters to inherit to them in preference to the sons and daughters of their sisters and female cousins. They want to cut and transplant branches from the overgrown stem and ensure their healthy growth in conformity with the laws of nature. There is no use of any medical treatment unless a clear and correct diagnosis has been arrived at. It will be wrong to say that the demand for *makkathayam* and individual partition is not strong; nor will it be correct to hold that there are not various schools of people who still retain a hope that an amputated matriarchal family may yet be happy under the skirts of the future. These latter do not organise themselves to carry on any deliberate propaganda but rely mainly on the chances of inaction. The individual partitionists, on the other hand, are putting forth their best endeavours to educate the people. Large conferences of Nairs in different parts of the country have met and affirmed their principles and the tyranny of ideas is so great that few people dare to expound a different course of legal improvement. The political and economic aspects of the change are seen to lend a colour to the popular desire and its juristic aspects; but the ways and means have not been clearly set forth, nor are the difficulties carefully appreciated even by those who are impassioned advocates of immediate change. A few questions suggest themselves for examination in this connection. Is individualism to have unrestricted operation and to be allowed to break up the family at once? Is an individual to be given his share in the ancestral property irrespective of the life of his mother? Is there to be any preference given to individual young women who are future mothers? When do the *per capita* and *per stirpes* rules begin to act? What is the *solatium* to be given to a *karanavan* who is in the enjoyment of a right vested in him under the existing law? Is a boy or a girl who has been educated or otherwise encouraged at the expense of the *tarwad* entitled to the usual share in addition to the money already spent? Should there be any direction of the law by which equity in sharing may be kept in view? Should there be any unusual instance in which the *per capita* and *per stirpes* principles may be combined? What is the average number of individuals in the generality of *marumakkathayam tarwads* and what are the average assets capable of division? What safeguards are to be provided for the preservation of family temples and charitable trusts? What is the number of unmarried women and girls in the average *tarwad*? What is the proportion of Nair wives now living with their husbands under their maintenance? Is the average Nair house capable of division? How many individual partitions have been effected during the last five years and what are the results? These are a few of the many questions that will have to be examined in detail. I do not accept the

LIBRARY ARCHIVES Kerala Legislative Assembly

principle of individual partition among men and women as an end in itself. It is merely a means to our progress to *makkathayam*, if that is possible. I am not for frittering away the *corpus* of family property between both sexes and all degrees of descent in permanent continuity. Social and economic welfare depends in great measure on certain land-marks of private property; and it is the perception of this truth which has given rise to certain artificial and even inequitable rules restraining equal division in most countries.

The Nairs are an agricultural people and the excessive subdivision of land will pave the pay to ruination. The advantages of large farming compared to small farming are well-known. The disadvantage of small scattered holdings has been emphasised by scientists and administrators in recent years and notably by Mr. Keatinge in the Bombay Presidency. The following reference to the report of a committee appointed by the Government of His Highness the Gaekwar of Baroda to make proposals on the consolidation of small and scattered holdings in the State, quoted in Professor Kale's *Indian Economics* is highly instructive. The report states that (1) land has already been minutely subdivided, (2) preventive measures must be taken and the present limit of subdivision must be raised; (3) the growing subdivisions are mainly due to the operation of Hindu and other laws of inheritance; and (4) subdivisions have made agriculture uneconomic and wasteful. The committee recommends that the minimum dimensions of an economic holding may be fixed and a permissive act may be passed to effect the consolidation of existing small and scattered holdings. The creation of impartible holdings appears to be the permanent policy of certain States. In Denmark and Germany and several other countries of the west, the fragmentation of agricultural land is permitted only with the consent of the local governmental authority. The number of shares into which the *tarwad* may be divided should therefore be as small as possible. The case of house-property is even more important. In France and the United States, there are laws passed with the object of securing the permanency of the home by making it inalienable and non-hypothecable. Non-division is allowed at the request of the husband or wife or any of the children for a period of five years, if some of the children are minors. Facilities are given to co-heirs to purchase the other shares. There are also statutory local bodies for promoting the erection of dwelling-houses by means of Government grants. Subdivision of house property is not permitted in Japan. The family is the unit of civilisation in all countries and particularly in Travancore; and the Nairs from time immemorial have preferred the family to the individual. It is this sense of social stability that guards the institution of primogeniture in England. It is this same sense that keeps up our regard for the hearth and the home. It is this recognition of mutual cooperation that persuades a father and a mother to spend all their hard-earned or hard-borrowed cash to keep a boy at school, while his brother and sister are put to the suffering of a half-filled stomach and an ill-clad body. I am not able to make up my mind that the sisters who cooked his food and prepared

LIBRARY ARCHIVES Kerala Legislative Assembly

[Dr. N. Kunjan Pillai.]

warm water for his bath, who worshipped the kitchen fire and served the sooty pot, and put themselves to the perennial intensity of self-sacrifice for years and years together should have no kind of interest in his property. The bill does not even provide for the maintenance of old and helpless parents, although the duty of protecting them is recognised even in civilised rational England. Sir, the edifice of *marumakkathayam* has been shrunken and shattered by the changed vicissitudes of civilisation and I am one of those who think that it is impossible to prop it up with legal fictions and temporary expedients. But I venture to hope that it will yet be possible to maintain the beneficial condition of the family by substituting *makkathayam* for *marumakkathayam* with prudence on lines of least resistance, by making the son the unit of descent instead of the daughter, but without making the daughter a waif and stray or leaving her without the certainty of marriage or the prospect of children, unprotected by the strong arm of a father or a brother. Legislation by fits and starts is a decided evil. As observed by Montesquieu, the necessity to change the law is rare; but, when it occurs, one should touch it only with a trembling hand. I consider individual partition of immense evil to the community, if it is not accompanied by a sure method of constituting separated members into joint families constituted under a different principle, the principle of agnatic relationship. The individual members of the Nair community will not be able to fight the organised communities of the land in the struggle for existence. I am sure that the defects of probable isolation and weakness will be cured by beneficent provisions in the Select Committee. Some of the amendments in the law proposed to be made in the bill are beneficial to the community. Subject to the above observations, I am for affirming the principle of the bill. With all due safeguards, there may yet be difficulties at the time of transition; but I am comforted by the reflection that, beneath the wild waves of evil, there are the eternal rocks of good.

DR. N. KUNJAN PILLAI: Sir, I rise to support the general principles of this bill. In doing so, I do not propose to go in detail into the various clauses of the bill, nor do I propose to make general observations on many of those clauses. I only wish to confine my remarks to the most important and the most contentious section of the bill, *viz.*, that relating to partition. I do so because it seems to me that the question that has been agitating the minds of the members of the Nair community for the past many years is this one question of the partition of *tarwad* properties. To decide whether Nair *tarwads* require partition, and, if so, what form of it and up to what stage, we have to consider the tendency or the attitude of the community towards the existing and proposed systems of inheritance. If the community, as a whole, believes that it is for its good to adopt *makkathayam*, I do not see why the legislature or anybody else should stand in the way of the community's wishes being realised. If, on the other hand, the community does not show a clear tendency towards the adoption of *makkathayam*,

LIBRARY ARCHIVES Kerala Legislative Assembly

why should we waste our time and energy in enacting an unwelcome piece of legislation? Any one who understands the present position of the community will have no doubt whatsoever to decide what the attitude of the community is. There was probably a time when the *marumakkathayam* system worked for the good of the community. That was a time when sisters and brothers, uncles and nephews, lived together under one common roof and acted together as one unit under the command of the *karanavan*, the manager of the *tarwad*. My friends who oppose individual partition and *makkathayam* admit clearly that such an ideal *tarwad* does not exist at present.

MR. T. K. VELU PILLAI: May I ask my friend, Dr. Kunjan Pillai, who are those that are opposing the *makkathayam* system?

DR. N. KUNJAN PILLAI: If there is none in the Council, there are many outside it who do so. There *are* people who oppose the principle of *makkathayam*, even though they admit that the *marumakkathayam* family in its pristine purity does not exist any longer. Disintegration of the *tarwad* has set in and is fast going on. What the causes of this disintegration are, it is not necessary for us to enquire. But if the fact is recognised that the *tarwad is* disintegrating, the only courses open to us are either to remove the forces of disintegration and restore the *marumakkathayam* system to its original form, or give up the system entirely and adopt *makkathayam*. To my mind, it is not possible to arrest the process of disintegration that is going on and restore the *marumakkathayam* system to its original form; and I have not seen any constructive proposals put forward by the opponents of individual partition and *makkathayam* for the removal of the causes that bring about this disintegration. *Marumakkathayam* had its glorious days. That, as I said, was when the brothers and sisters, uncles and nephews, lived together and acted together as one common unit under the command of the *karanavan*. Those days are gone. It is the universal practice now for the husband and the wife to live together with their children. Association stimulates, or at least strengthens, affection; and separation weakens it. It was this association that created mutual affection between uncles and nephews and sisters and brothers in olden days; and as long as there was mutual affection they were able to live together peacefully under the protection of a loving *karanavan*. But such a state of affairs no longer exists. At present, the association is between the husband and the wife and their children. It is a very common practice now among the Nairs for the married couples to live separately. A Nair gentleman, as soon as he gets married, tries to find a separate house and make a home of his own. As long as he does not live with his wife and children, he has no home in the sense in which it is generally understood. Even when married men live in their *tarwad* houses, they live with their wives and children separately. This is due to their natural desire to make a home even if it be in *tarwad* houses. There are numerous instances of a number of families of husbands, wives and children living together in one *tarwad* house, but with separate homes. In such cases, even the cooking is done separately.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

MR. N. PADMANABHA PILLAI: Sir, may I ask Dr. Kunjan Pillai in which part of Travancore the system of separate cooking exists?

DR N. KUNJAN PILLAI: It exists in Trivandrum, Quilon and even in Central Travancore.

MR. M. N. PILLAI: May I inform Dr. Kunjan Pillai that it does not exist in Trivandrum?

PRESIDENT: Mr. M. N. Pillai, you are not putting a question. You may say what you have to say in your speech.

DR. N. KUNJAN PILLAI: Sir, I am not going to dwell in detail on that point. I know that the practice exists in and about Trivandrum. I am sure that it will be admitted by all that the attitude of the Nair community shows a distinct leaning towards *makkathayam*. This is the goal that the community aims at. In these circumstances, what is our duty? The answer is simple. We should do all that is possible to help the community to reach the goal. Whether the community should rush to the goal all at once or proceed only slowly and reach it gradually is a matter to be decided later on.

In the course of the speeches already delivered in this House, two of my learned friends, Messrs. N. Padmanabha Pillai and T. K. Velu Pillai, have advanced one strong argument against individual partition, an argument based on economic grounds. I have some hesitation in treading upon the fields of economists. I shall only deal with the agricultural aspect of the economic question involved in the division of *tarwad* properties and I do not think that there will be much divergence of opinion between me and my friends on that point. For the proper development of agriculture, economic holdings are absolutely necessary. There is a movement all over India at present for the consolidation of holdings. Legislative action for the same purpose was taken at different times in other countries also, such as Germany, Switzerland, etc. There, the subdivision of land had gone so far that the Governments had to resort to legislation to bring about a consolidation of holdings in the interests of agriculture. Mr. Keatinge, the late Director of Agriculture in Bombay, drafted a bill for the consolidation of holdings, which he wanted to introduce into the Bombay Legislative Council. Mr. T. K. Velu Pillai quoted Mr. Keatinge. In a note which Mr. Keatinge submitted to the Bombay Government, he pointed out that, in the Bombay Presidency, subdivision and fragmentation of lands had gone too far and that steps should be taken to consolidate the holdings. The holdings become uneconomic not only because their size gets less, but also because the plots comprised in each holding get scattered. This is what is called fragmentation which is also a serious evil.

MR. T. K. VELU PILLAI: Sir, I want to ask a question. I wish to know whether the average holding in the Bombay Presidency is very much larger than the average holding in Travancore. I wish to have some figures about the extent of the largest and the smallest holdings.

LIBRARY ARCHIVES Kerala Legislative Assembly

DR. N. KUNJAN PILLAI: Mr. Keatinge has given examples of holdings in Bombay the extent of which is only one-fortieth of an acre.

MR. T. K. VELU PILLAI: I only ask for some general cases.

PRESIDENT: I think it does not arise now.

MR. T. K. VELU PILLAI: May I submit, Sir, that it does arise? I will explain. Dr. Kunjan Pillai was saying that the holdings in Bombay are getting very much smaller. I requested him if he would be able to give some cases. I think, therefore, that I am in order.

DR. N. KUNJAN PILLAI: I have already said that Mr. Keatinge has given instances of holdings the extent of which is not more than 1/40 of an acre. I cannot vouch for the accuracy of the figure. The point that I want to urge is that in Travancore holdings are even now small. Mr. T. K. Velu Pillai admits that at present they are even smaller than those in Bombay. The properties of a large majority of Nair *tarwads* are not economic holdings. What is an economic holding? An econonmic holding must be such that the holder is able to take full advantage of the natural facilities existing for cultivation, adopt the latest improvements in the methods of cultivation and produce the largest outturn from the lands. This is the object of an economic holding. There is not much use in having large holdings if the land is not made to yield all that it is capable of yielding. It is better to have a holding of five acres out of which the holder is able to make Rs. 500 per acre than a holding of fifty acres yielding only Rs. 100 per acre. Mr. T. K. Velu Pillai's quotation from the late Mr. Thanu Pillai's speech shows clearly that the Nairs, as a rule, neglect their lands and do not pay adequate attention to the development of agriculture. If anywhere you find a plot of land not well cultivated you may be sure that it belongs to a Nair, and if, on the other hand, you see a well-cultivated piece of land you can immediately say that it belongs to an Ezhava, a Christian or a member of some community other than the Nair. There is no advantage in having a large holding if it is not put to the best use. A Christian who possesses a small holding is able to earn more than a Nair *tarwad* which owns a large holding. This is due to the fact that, under the existing system of inheritance, there is no inducement for any member of a Nair *tarwad* to improve his lands and develop agriculture. It is not possible for the Nair to do so under the—

MR. N. PADHMANABHA PILLAI: May I know what exactly that is due to?

PRESIDENT: He says it is due to the existing law of inheritance.

DR. N. KUNJAN PILLAI: It *is* due to the existing law of inheritance. The *karanavan* is the manager of the *tarwad* and generally looks after cultivation. The nephews, unless they have been given portions of *tarwad* properties for maintenance, have nothing to do with cultivation. They have no responsibility whatsoever in this matter. The *karanavan*, on the other hand, does not care how the cultivation is carried on and whether the maximum yield is obtained from the lands or not. It

LIBRARY ARCHIVES Kerala Legislative Assembly

[Dr. N. Kunjan Pillai.]

is the absence of individual responsibility that accounts for such a state of affairs.

MR. T. K. VELU PILLAI: I have very great respect for Dr. Kunjan Pillai as he is an expert. I want to learn from him what is the minimum of land which will be an economic holding in Travancore.

PRESIDENT: It depends upon the conditions of the locality.

DR. N. KUNJAN PILLAI: It depends also on the methods of cultivation followed, the nature of the soil, the kind of crops grown, etc.

MR. T. K. VELU PILLAI: I only want him to tell in a particular locality, say in Pattam or Parur, what will be the average of some plot of land which will give the maximum to the cultivator.

PRESIDENT: It is very difficult to answer.

DR. N. KUNJAN PILLAI: In some parts of Travancore, I would consider that 5 to 10 acres of wet lands and 10 to 15 acres of dry lands would be economic holdings.

PRESIDENT: I know in Japan it is two-thirds of an acre.

DR. N. KUNJAN PILLAI: The point that I want to urge is that the advantages of a holding do not depend entirely upon its size, but also upon the manner in which cultivation is carried on. In Travancore, I invariably find that the Nairs are not so industrious or desirous to develop their lands as other communities are. My own personal opinion is that this is due to the fact that, in the case of the Nair *tarwad*, nobody feels any responsibility for the improvement of *tarwad* properties. It may probably be asked:—"Since large holdings exist here which is an advantage, why should they be broken up?" As I have already said, the improvement of such holdings is out of the question unless the present system of inheritance is changed. You should break up the holdings and give each individual his or her share. The individual shares having been delimited and separated, some means should be devised for consolidation as has been done in foreign countries and as is attempted to be done in some parts of India. Mr. Keatinge who drafted a bill for the consolidation of holdings in Bombay did not think it fit to introduce the *marumakkathayam* system of inheritance into Bombay. He found that subdivision had gone too far, but—I think he knew of the existence of the *marumakkathayam* system in this country—he did not think it advisible to suggest the introduction of *marumakkathayam* in Bombay with a view to bring about consolidation of holdings.

MR. T. K. VELU PILLAI: Did anybody say that the *marumakkathayam* system should be advocated in Bombay? I wish that the Director of Agriculture would understand that none of us suggested that it should be taken to Bombay. On the other hand, all of us want *makkathayam*.

DR. N. KUNJAN PILLAI: I do not say that Mr. Padmanabha Pillai or Mr. Velu Pillai made that suggestion. We have here at present,

LIBRARY ARCHIVES Kerala Legislative Assembly

the *marumakkathayam* system and in consequence it is believed that there are large holdings. If *marumakkathayam* is regarded as a means of bringing into existence large holdings, Mr. Keatinge could certainly have advocated its introduction into Bombay to prevent the subdivision of lands. What I say is that *marumakkathayam* holdings, though they may be large, should be broken up by individual partition and that after the individuals have been given their shares, measures should be devised for the consolidation of holdings and for the prevention of further subdivision as was attempted in Bombay by Mr. Keatinge. The provisions in Mr. Keatinge's bill relating to the above matters were the following:

1. The succession is in the first place to the issue, lineally, of the person last entitled to the holding, the male issue being preferred to the female.

2. Where there are two or more heirs in equal degree, the eldest only succeeds.

These were the measures proposed by Mr. Keatinge for Bombay. Something like this ought to be attempted here for the formation and preservation of large holdings after *marumakkathayam* holdings have been broken up into individual shares. *Marumakkathayam* holdings, at least the majority of them, as they are, are not large enough to be economic holdings; and even if they are, the objects of economic holdings are not being realised owing to the lack of responsibility in the members of the *tarwad*.

There is a considerable volume of opinion in the community in favour of individual partition. I am also decidedly of that opinion. But there is also a minority opposed to individual partition. It may be a negligible or a respectable minority. But, still, out of deference to the sentiments of the minority, I would be prepared to meet them half-way and effect a compromise in consideration of the fact that it would be a great calamity if, owing to the opposition of the minority, individual partition could not be had, and if, on that account, the whole question of partition had to be dropped. Even if *thavazhee* partition alone could be got, it must be on the lines laid down in the Ezhava Bill. In addition to this, we must also have that wholesome provision of the Ezhava Bill which has already been accepted by this Council, namely, that the whole of the self-acquired or separate property of a man should devolve on his wife and children. If this provision is also conceded, I shall accept *thavazhee* partition if individual partition cannot be granted. But this is the irreducible minimum. If at least this much could not be got, there is absolutely no use in attempting legislation now. We shall in that case be satisfied with what we have at present.

MR. K. P. RAMAN PILLAI: May I know on whose behalf he suggests that? I understand that, in the last Council, he received more than a hundred representations. Is it on the strength of those representations that he puts forward this suggestion?

DR. N. KUNJAN PILLAI: It is my own personal opinion. I have put forward the suggestion out of deference to the opinion of the opponents of individual partition. If we are not given the irreducible

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. M. N. Pillai.]

minimum suggested, we, who had stolen a march over our Ezhava brethren by enacting the present Nair Regulation, will fall behind them in respect of the system of inheritance which is intimately connected with the material and moral progress of a community.

With these observations and reservations, I accept the broad general principles of the bill.

MR. M. N. PILLAI: Sir, in accepting the general principle of the bill, I wish to make a few observations. The legislation that is now proposed is of far-reaching importance in so far as it is intended to modify very materially the law governing the Nair community in regard to marriage, succession, ownership and management of *tarwad* property. Changes have for long been found necessary in the *marumakkathayam* law, but there has never been unanimity of opinion as to the extent and direction of the required change. That validity should be attached to marriages, that the wife and children should be given the right to inherit the husband's and father's acquisitions, and that the evils of the law governing the management of *tarwads* should be minimised, began to be recognised long ago. Regulation I of 1088 was the result of the recognition of the necessity for change in these directions. But that piece of legislation has not satisfied the growing demand for change. The present bill is an attempt to further meet the demand. It seems to me that the generality of Nairs do wish for further changes in the law; but I am not satisfied that there are enough data to justify the conclusion that the general sense of the community as a whole is for so much of change as is proposed in the present bill. Leaving details out of consideration for the present, the material changes in the law proposed to be effected are:

(1) by prohibiting polygamy in certain cases;

(2) by giving the Nair wives and children of non-Nair husbands and fathers the right of inheriting the latter's properties;

(3) by making the wife and children of a Nair male his sole heir (except that his Nair father and mother take a share of his property) instead of dividing the inheritance between his wife and children on the one hand and his *marumakkathayam* heirs on the other; and

(4) by making provision for partition of *tarwad* properties.

Firstly, the prohibition of polygamy does not seem to be called for by the community, nor does it seem to be acceptable in its interests. In normal conditions, the difficulty of maintaining more than one wife and the children by her is a sufficient safeguard against polygamy. But there may be exceptional circumstances, such as the incapacitating illness of the wife which might induce a man to marry a second wife. There is no reason why, under such exceptional circumstances, a man should not be allowed to marry more than one wife. The other alternative under the law proposed would be to divorce the wife and marry another.

LIBRARY ARCHIVES Kerala Legislative Assembly

The right to enter into more than one marriage is not found to be misused by the members of the community. Even the mover of the bill is for giving non-Nair husbands of Nair females freedom to marry women of their caste. To my mind, this is a strange position. The Nair wife of a Brahmin occupies a position, if at all, of inferiority to his caste-wife; and if any restriction is to be imposed, it should be directed to the prevention of a non-Nair husband of a Nair female marrying a caste-wife.

Secondly, the primary right of the wife and children of a Nair to inherit the latter's property was partially recognised by the Nair Regulation of 1088. But this right was not conferred on the Nair wives and children of non-Nair husbands. If this right of the wife and children could be recognised so far as to affect the devolution of the properties of a Nair male who till then was a pure *marumakkathayee*, it looks anomalous that the same rights should not have been extended to the Nair wives and children of non-Nair husbands whose personal law generally is in favour of wives and children in the matter of inheritance to property. It is really unnatural and barbarous that the natural obligations of a father to provide for his children should be subordinated to minor considerations. The principle that the Nair wife and children should be enabled to inherit the property of the non-Nair husband and father must be unreservedly accepted. The well-being of the people requires that the sanctity of marital relationship and all rights and obligations flowing from that relationship should be fully recognised, whether the parties to the marriage belong to one and the same community or to different communities. Let not parties enter into a marriage when they are not prepared to attach to it those incidents that naturally belong to it. The bill proposes to give the Nair wife and children of non-Nairs a half-share of the self-acquired and separate property of the latter. The share and the kind of property to be affected by this provision are details to be settled later on.

The other important changes proposed in the bill are calculated to satisfy the demand made by a considerable section of the community for a conversion from the *marumakkathayam* to the *makkathayam* system of inheritance. Clause 26 of the bill provides for unrestricted partition of *tarwad* property among individual members of a *tarwad*, and clause 13 provides for the devolution of property entirely on the wife and children of the owner. These provisions ring the death-knell of *marumakkathayam*. In effecting so revolutionary a change in the law, we have to consider the wishes of the community in general and also the effect of the proposed change on the future of the community. I am not unaware of the fact that there is a considerable section of Nairs who are for the complete disintegration of their *tarwads* and the immediate extinction of *marumakkathayam* and acceptance of *makkathayam*. But the general sense of the community as to the extent to which changes should be effected in so vital a matter has not been, to my mind, satisfactorily ascertained. Have the nature and consequences of this revolution in their social and domestic existence been sufficiently brought to the notice of the members of the community and their

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. M. R. Madhava Variar.]

views ascertained in regard to that revolution? An expression of opinion by a majority of people attending a meeting in a particular centre cannot, I humbly submit, be safely taken to be an index of the opinion of the people. In a matter of such importance, it is not the educated and the rich alone that have a right to be heard; the poor and the uneducated are to be equally affected and have an equal right with the others to be heard in this matter.

That the *makkathayam* system of inheritance and the grant of individual rights to property have great merits of their own, nobody can dispute. But the dangers of an abrupt change from one system of inheritance to another should not be lost sight of. It may be that the Nair community will have a more prosperous life under *makkathayam* than it has had hitherto under *marumakkathayam*. It may also be that the confusion that will arise in consequence of the minute divisions and subdivisions of property, the disruptions of the old ties and the creation of new ones, the disappointment of legitimate expectations, the loss of properties and the various other results of the change may affect the community so adversely in the immediate future that the evil effects of the change may outweigh the good that may accrue from it. If a properly constituted committee had taken the evidence in regard to the need and desirability of individual partition of *tarwads* and the adoption of *makkathayam* in the place of the existing system, the work of this Council would have been easier. As matters stand at present, we have to proceed carefully and cautiously. Let us remember that we have to legislate for the man of the most advanced *makkathayam* tendencies as well as for the man who still steadfastly clings on to *marumakkathayam*. No legislature is expected to disappoint legitimate expectations. An immediate acceptance of *makkathayam* cannot but have this result. It will be for the Select Committee to consider whether a compromise—temporary though it be—cannot be effected between these conflicting considerations.

MR. M. R. MADHAVA VARIAR: Sir, we are anxiously considering a bill which is introduced to safeguard the interests and to satisfy the wishes of those members of the advanced section of the Nair community who feel that the existing system of *marumakkathayam* tyrannises over individuals, curtails individual initiative, exalts family autocracy and threatens industrial advancement. Though the *marumakkathayam* system has existed from time immemorial and though it has contributed considerably to the welfare and stability of the community, certain circumstances have intervened to strike at the root of the system and unhinge its vital props so much so that any attempt to make minor repairs to the dismantled parts of the huge edifice being infructuous, a thorough overhauling has become imminently necessary. The Nair Regulation of 1088 sanctified the marital ties and cautiously introduced *makkathayam* into the very heart of the *marumakkathayam* parent; and the judicial decisions liberalised

LIBRARY ARCHIVES Kerala Legislative Assembly

the Regulation still further by embodying the advanced opinion in the community within the four corners of the statute. So, the natural love of *makkathayam* which exists throughout the world accentuated by the Regulation of 1088 and by judicial pronouncements has claimed an abiding place in the heart of the community. Secondly, the spirit of independence and self-determination which is abroad has infected the junior member and has made him rebel against the autocracy of the *karanavan* who naturally is a little partial to his wife and children. The junior member asserts his own right and requires the *karanavan* to give him his own share to be expended on his family affections. Thirdly, the unprecedented industrial activities in the country have rudely awakened the ambitious but lazy junior member. He feels that he is prevented from starting *chitties* and organising companies merely because he has no capital and no credit. Many Nair youths might have keenly felt it when they had bid *chitties* and found themselves unable to give any reasonable security to draw the prize amount. It is on account of these causes that the junior members of the community and the advanced thinkers have resorted to individual partition as a panacea for these evils.

Mr. K. P. Raman Pillai's bill sanctions outright partition of Nair *tarwads* and every major individual is given absolute proprietory right over his share. Though his bill may give absolute satisfaction to individual-partitionists of this generation, he is not pleased to extend the same blessings which this genenation expects to the next generation also. Now one can at least say that one is a member of a *tarwad* which owns some property in which one is also interested. But after a generation, the sons of a father cannot claim any property during the father's lifetime and he cannot boast of capital or credit to start industries or to give securities. He has to depend upon his father's sweet will and pleasure. If his father divorces his mother and marries another and gifts the property to her, the poor son cannot claim any portion of his father's acquisitions. The lot of the junior members will be the same then as it is now. So it must be clearly understood that individual partition and succession as adumbrated in the proposed bill will not invest the junior members of the next generation with any rights which they claim at present and that we are simply satisfying the craving for *makkathayam* by the provisions therein.

The system of inheritance which we are discussing is a conglomeration of different systems. We are not blindly following any system which has stood the test of time and been found adaptable, but making a new system embodying different portions of other systems. For example, in succession we follow the Christian law and in divorce we follow the Nair Regulation. I fear that in the next generation we will have to encounter very many difficult problems if these provisions are retained as they are in the bill. Then a daughter will have no portion and a father who has three daughters and two sons and who has not lost his animation will not be inclined to partition away the daughters' portions at the time of their marriage. He is not bound to do it under the bill and it is only very rarely that he will be inclined to do it. Anyhow,

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. M. R. Madhava Variar.]

that is the experience which we have gathered from the doings of those who follow the system of inheritance which we desire to adopt. Then will arise the notorious and troublesome institution of *stridhana* which is a perpetual thorn on the side of those who have the misfortune to beget female children. I seriously ask this House the question whether it is proper to leave to the next generation the bitter pill of dowry to be swallowed without demur. Imagine the case of a girl whose mother is divorced by the father when she attains marriageable age. The burden of finding a husband and giving *stridhana* falls on the poor devoted head of the mother who is the legal guardian of the girl under the bill. The girl can at best claim maintenance from the father and nothing else. Under the provisions of this bill, there will be no *tarwad* from which junior members in the next generation can claim maintenance or *stridhana* and so the provision in clause 2 that nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own *tarwad* is useless as regards them, since they will have no rights anywhere if the husband or father, as the case may be, is alive or if he has disposed of the property as he likes. So the provisions relating to divorce and succession in the bill are apt to create untold anomalies which we must foresee and avoid. No *makkathayees* in the world except the Muslims sanction free divorce; and if we allow free divorce we have to model our system on Mahomedan law and not on Christian law. Perhaps the sponsor of the bill may claim that clause 6 is intended to prevent frequent divorce. But I do not think pecuniary considerations will dissuade very many people from resorting to a freedom which is allowed to them; and I may point out that by clause 8 divorce is effected before the amount of compensation which is intended to frighten the parties is determined. Either the provisions relating to succession or divorce have to be changed; or the system of inheritance for the Nairs must be based on a more permanent and logical system.

The principle of partition adopted in the bill is in my opinion neither equitable nor acceptable. By clause 27, every member is given equal right. This would have been proper if the Nairs had hitherto been following *makkathayam*. But the system of inheritance and the traditions thereunder which the Nairs are following are quite different. In partitions by agreement, the *karanavan* who was instrumental in safeguarding and augmenting the family properties is given an additional share. But in the bill, the *karanavan* is allowed only a share which the new-born babe is entitled to. I do not know whether the explanation under clause 12 (*c*) will apply when partition is effected and whether the *karanavan* can claim one-half of the acquisitions which the *tarwad* has made through his efforts as his self-acquired property. If that is so, there is nothing more inequitable under the present circumstances.

There is no provision in the bill for the protection of *Kalaries*, temples and groves which are useful and necessary institutions. I do

LIBRARY ARCHIVES Kerala Legislative Assembly

not know whether god-fearing and conservative people who form the majority will yield to the demolition of these institutions by any law of partition. In every *bhagapatram* some provision is made for the conservation and protection of these institutions which are being throttled by new-fangled notions. In view of these difficulties, partition has to be effected on a basis entirely different from the one which is suggested in the bill and I leave it to the Select Committee to solve this knotty and intricate problem. I am of opinion that, until partition is effected, it is dangerous to the community to allow a provision like clause 28 which will be the cause of ruin to many families.

Hitherto, I was dealing with individual partition on its own merits. But I have to take note of the serious opposition and the volume of opinion which is raised against this radical measure. Everybody with whom I have talked about the subject—even the most radical individual—partitionist—has clearly admitted to me the manifold evils which will spring from a sudden disintegration of the corporate life maintained for so many centuries; and the only solution which they suggest is that the community must suffer for some time the consequential evils with a view to succeed along with other progressive communities. In the first blush of allowing partition, we can be sure that every junior member in all families will claim partition and that in the generality of cases the fear of a diminution of share will drive them to immediate partition. Investing with rights those who were hitherto irresponsible is thought to be a dangerous experiment by many old and experienced men in the community. It is also feared that, though female suffrage and individual liberty are phrases to be conjured with, it is really dangerous to allow our women to handle properties without any check whatsoever. We in our enthusiasm may generously confer rights and privileges on our women who have not acquired the capacity and responsibility to possess and safeguard property. Individual partition is expected to introduce smaller holdings which are in the eyes of the economist a curse to the country. Some fear that, if individual partition is allowed, they will have to modify their customs and beliefs, to live by the side of people who are at present unapproachable, and to have recourse to professions hitherto held in contempt by them.

A bold and young junior member may not care very much for these difficulties, may take any number of risks, and may suffer anything with the zeal of amartyr for the up lift of his community. But there are among the Nairs timid and weak men, men steeped in the old traditions and prejudices, men who will rather die than suffer so-called indignities in their lives, men who cannot afford to take risks. We have to respect these people, and their number is not inconsiderable. If the peace of a whole family of good and respectable men is to be disturbed by an impertinent young man in the name of a law passed by this House, I do not know what they will feel. So what I submit to this House is that there must be a provision in this bill allowing the majority of major members in a family the option of remaining impartible or of partitioning their *tarwads* by *thavaznee*. Even if we allow outright individual

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. M. Raja Raja Varma.]

partition, my view is that, in the place of a joint family which we are breaking up, our aim must be to substitute another joint family on a different basis. I have clearly pointed out before that our objective is *makkathayam* and not individual partition or individual independence. I am of opinion that, instead of leaving it to the Government to exempt individual families from the operation of the bill, this House must make suitable arrangements to give effect to permissive legislation.

I have to advert to one other point and then I shall conclude. I am strongly in favour of monogamy. I have to respectfully differ from the illustrious *Puranic* heroes whose examples were quoted by Mr. T. K. Velu Pillai. I think it is unjust to sanction polygamy if we are not prepared to sanction polyandry.

MR. T. K. VELU PILLAI: May I tell my friend that it is not sanctioning polygamy but it is not compelling monogamy?

MR. M. R. MADHAVA VARIAR: Non-Nairs are allowed to marry Nair women under the existing custom. In the bill, they are allowed to be polygamous. I concede that it is not right to legislate for a people who do not directly come within the scope of this bill. My view is that nobody who marries a Nair woman should be allowed to keep a caste-wife. He who cannot but be polygamous must make it a point, hereafter, not to meddle with Nair females. This provision should, however, come into force only from the date of the Regulation. Another point which I have to urge before this House is that it is insulting to the community to allow their women to be married by non-Nairs and to be kept as concubines in addition to a number of other wives. There should be no compromise in this matter.

MR. T. K. VELU PILLAI: I must tell Mr. Madhava Variar that Mr. Raman Pillai does not provide for concubines but only for wives. If it were concubines, then all of us would object. But since the provision is for wives, all of us are for it.

MR. M. R. MADHAVA VARIAR: With these few observations and with the full belief that the Select Committee will earnestly consider these views and will make considerable changes in the provisions of the bill in principle and detail, I support its introduction.

MR. M. RAJA RAJA VARMA: Sir, I heartily appreciate the aspiration of the most important and progressive community in the State for taking a further step in advance in the matter of social legislation. Since the enactment of Regulation I of 1088, ten years have now elapsed, and it is only fair that, with the progress of time, the Nair community, which stands in the forefront of civilisation and progress, should seek for further measures to ameliorate the disadvantages which that community is still labouring under. Things are moving so fast all around that, unless timely action is taken to move forward rapidly, it would be impossible for any one community to keep its head above water. It is in this view, I take it, that my friend Mr. K. P. Raman Pillai has brought his Nair Regulation Amendment Bill.

LIBRARY ARCHIVES Kerala Legislative Assembly

Although I recognise the need for such improvement, I would seek the indulgence of the House to make a few observations on some of the provisions which are embodied in the bill and which, to my mind, seem to affect the fortunes of communities other than the Nairs. Unlike the Ezhavas and the Nanjanad Vellalas, who form self-contained communities, the Nair community has, from time immemorial, sought and secured marital relations with other communities which follow their own personal law. So long as social legislation affects only the community which seeks for it, others beyond the pale cannot reasonably interfere with it except by offering friendly advice. But when a piece of legislation specially framed for the benefit of one community prejudicially affects the interests, customs and usages of other communities, there is bound to be a voice of dissent raised in regard to such provisions. While I admit that no community has a right to impose its law on another, I equally assent to the proposition that no community has a right to exploit another. In the bill that is now sought to be introduced, the marriage of a Nair female by any male other than a Nair with whom usage and custom has permitted a conjugal union, is declared a valid marriage. So long as it is so, and so long as the Nair community wishes the benefits of this time-honored custom, it has necessarily to respect the usages and customs of the communities with which it seeks alliance. One of the most important changes proposed to be made in the bill is to enforce monogamy on Nair males. There can be no difference of opinion that this is as it should be. It is noted that clause 10 of the Amendment Bill does not debar those having a personal law allowing polygamy from marrying in their own caste, even during the continuance of a marriage with a Nair female. This should set at rest the uneasiness which was felt by non-Nair communities on a former occasion when it was sought to restrict their freedom to marry within their own fold according to their own personal law during the subsistence of their marriage with a Nair female.

This regard for the personal law of other communities so generously provided under the chapter relating to marriage and dissolution, seems to be restricted in the provision made in the bill for the intestate succession of a non-Nair male. I refer to clause 13 B. That clause says that a non-Nair male, dying intestate, leaving him surviving a Nair widow or children or both, she or they shall be entitled to one-half of the self-acquired and separate property of the deceased, if he has undivided heirs, or the whole of that property, if there are no such heirs. Both under the Hindu and the *marumakkathayam* common law, inheritance to the property of a deceased person is based on the principle that those who perform the obsequies of the deceased are the right heirs to whom the properties should descend. Under the Hindu law, the son performs the obsequies of the father, and under the *marumakkathayam* law, the issue of his sister does so.

MR. T. K. VELU PILLAI: I wish to know whether the member has not come across a case in which the sons performed the ceremonies of the deceased father.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. M. Raja Raja Varma.]

MR. M. RAJA RAJA VARMA: I have not come across any such cases.

Hence the succession to a *makkathayam* Hindu goes by the male line and that of a *marumakkathayam* Hindu by the female line. Under both laws, the widow has only a right to maintenance so long as she remains a widow. Under the Criminal Procedure Code, the minor children of a deceased *marumakkathayee* get a right of maintenance. When a Nair female chooses to marry a non-Nair male, such marriage cannot change the personal law of the husband. The provision made in the Amendment Bill proposes to change that law. There is a world of difference between a right for maintenance and the right to succession. The former is a right based on a civil contract, while the latter is a right accruing by the performance of religious rites.

MR. T. K. VELU PILLAI: I wish to ask a question. I wish to know whether, when Koiltampurans marry Nair females, it is a contract or a marriage.

MR. M. RAJA RAJA VARMA: Religious rites are performed and it is a religious act.

MR. T. K. VELU PILLAI: I wish to ascertain if, when a Koiltampuran marries in a Nair family, his wife and children do inherit his property.

MR. M. RAJA RAJA VARMA: Certainly, they do not. If a time should come when the non-Nair communities, who have conjugal relations with Nair females, should consent to change their family law and allow the children by such union to perform their religious rites or decide that no such ceremonies need be performed by any one, it would be ripe to legislate for the succession to the property, in portion or in whole, by the children of the deceased by the Nair wife. Until then—and I am afraid it will take a pretty long time before such a custom could be evolved—it would be making a serious inroad upon the customary and personal law of the deceased non-Nair to devolve his property on his Nair wife and children. It would, I believe, serve all purposes if the maintenance of the widow and minor children be made a charge on his self-acquired property, the property itself descending according to his personal law.

The explanation appended to clause 13 gives one-half of the acquisitions made by the *karanavan* from *tarwad* funds as his self-acquisition. So far as non-Nair communities are concerned, it would also be an innovation from their personal law. Whether the non-Nair be a *makkathayee* or a *marumakkathayee*, all acquisitions made by him by using family funds can go only to augment the common property. Members of the non-Nair community would strongly resent the introduction of a rule, so as to create self-acquired property out of family property, and thereby give a legal handle to managing members to misappropriate common funds. In the statement of objects and reasons,

LIBRARY ARCHIVES Kerala Legislative Assembly

as the mover of the bill thinks that such a provision would tend to make the managing members more honest and anxious to work for the common good of the family. I am afraid it may have the opposite result.

MR. N. PADMANABHA PILLAI: I wish to ask a question. Why should non-Nairs seek for marriages with Nair females if they are not willing to bear the responsibility?

MR. M. RAJA RAJA VARMA: It is not a question of a non-Nair seeking marriage with a Nair female.

MR. T. K. VELU PILLAI: I wish to know whether that portion of the earning of a Government servant drawing more than Rs. 150 should not go to his wife and children?

MR. M. RAJA RAJA VARMA: I object to a non-Nair's property descending to his Nair wife and children.

MR. T. K. VELU PILLAI: Am I to understand that my friend's position is irrespective of the fact that the acquisition of the non-Nair individual is the result of the management of *tarwad* funds?

MR. M. RAJA RAJA VARMA: My position is that all acquisitions by means of *tarwad* funds should go to the *tarwad*.

The chapter regarding partition relates only to Nair families, and as such, any expression of opinion from a non-Nair might probably be ruled out of court. But as one having an abiding interest in the welfare of the Nair community, I would ask, for the consideration of the community and of this House, whether it would not be well to pause and think coolly if a complete disruption of the existing family system, by allowing individual partition, is ultimately to the lasting good of the community. The permission to claim individual partition and the provisions made under intestate succession are tantamount to converting *marumakkathayam* families into *makkathayam* families. This is neither the place nor the occasion to give a disquisition on the relative advantages or otherwise of the *makkathayam* and *marumakkathayam* systems. We are surrounded by innumerable concrete examples of both, and they should serve as an object lesson. Ideally conceived, both the systems are good and beneficial. A *karanavan* who has the general good of the family in view is as good as a father who looks after his children and grandchildren with paternal love and consideration. On the contrary, a mischievous father who squanders away the family property is certainly much worse than a *karanavan* who can at worst squander away only the income therefrom. To balance the benefits and dangers of *marumakkathayam* and *makkathayam* would be a very hard task, and any judgment which we may arrive at can only be regarded as personal. The mirage of individual property is bound to vanish in the air when reached in the case of even rich households. To save ourselves from the tyranny of an individual *karanavan*, we are probably attempting to dislodge every member from the house and leave them all adrift. It is like setting fire to a house for fear of rats. When once the union is broken, it would be impossible to bring it about again. In these days, when miracles are

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Govinda Menon.]

expected to be done by co-operation and team work, I would seriously invite your consideration to the question whether the disruption and disintegration of families of long standing and high traditions and status should be attempted. I am not unaware that there is a provision for exemption made in the bill for those who cling to conservatism, but it would be idle to expect that, when there is a torrent of separatism breaking over the head of the community, any portion would have the strength to stand firm. Willingly or unwillingly, they are bound to be snatched away from their moorings and go along the current pell-mell. It would be difficult for all the major members of a *tarwad* to unite in asking for exemption. Hence, that provision would hardly safeguard the interests of the conservative section of the community. I mention the above only to indicate the dangers ahead, which should make us more cautious in making this final move. Could we not go, step by step, as our Ezhava brethren have done, by allowing partition by *thavazhee* first, and later on, when the time is ripe and when the community is fully acquainted with the consequences of the first step, to move for the ultimate partition *per capita*? I would leave this suggestion to be decided by the good sense and consensus of opinion of this House as well as of the community.

The only other remark that I would like to make is in regard to clause 31, giving power to Government to extend all or any of the provisions of the Regulation to communities other than Nairs. I need hardly say that this provision is irrelevant to the Nair Regulation, and that the other communities may be trusted to come before this Council, in due time, for any legislation which they may require.

With these words, I support the principle of the bill.

MR. A. GOVINDA MENON: Coming as I do from a part of the country where the *marumakkathayam* system in its reality prevails and belonging to a *tarwad* and connected with other *tarwads* which still rigidly maintain that system, it may be a matter for surprise to some of my friends in this House to know that I am an out and out advocate of individual partition. Some five years ago, when I was elected as a member of the Legislative Council, the *karanavan* of a south Travancore aristocratic family congratulated me for the reason that I at least could be relied on to oppose the cause of the individual-partitionist. I can only say that I have proved a thorough disappointment to that gentleman and his friends of, what I may term, the conservative party of the Nair society.

Marumakkathayam would serve well in a community in which the members of the *tarwad* live together under one roof and work for the common benefit. The ideas of separate acquisition and separate living are absolutely foreign to the members of a real *marumakkathayam tarwad*. Nobody in such a *tarwad* lived outside the family house and the earnings of every member went to swell the family exchequer. The *karanavan* of the family met the expenses of all the members of the family from the *tarwad* fund. These *karanavans*

LIBRARY ARCHIVES Kerala Legislative Assembly

were not like the autocrats of the latter-day type, nor was the *tarwad* system characterised by the rigid impartibility which later judicial pronouncements have conferred on them. It has been shown by some of my friends here that partition of the *tarwads* was not unknown in Kerala. A judiciary who did not understand fully the customs of the *marumakkathayam* society put a stop to the growth of customary law in Malabar and our judges were not slow to follow their brethren in British India. The result has been disastrous to the growth of the Nair community. The ideals and the angles of vision of the members of the community have been undergoing radical changes, and yet their system of inheritance has remained stationary. The natural growth of a society cannot, however, be paralysed by artificial restrictions, and the result has been that *tarwads* have been, in most cases, split up into smaller units. But a partition of *tarwad* property almost always meant a partition of debts contracted, and not the assets acquired, by the *karanavan (Laughter)*. This has been specially so in Travancore, where few families remain in their original undivided state. Originally, this division took place on *thavazhee* lines. For the last ten years, it has taken the individual form in nearly 50 per cent of the cases. This fact shows that *thavazhee* partition has had its day and that it is rapidly giving place to individual partition. It will, therefore, be of absolutely no use to legislate for *thavazhee* partition at the present day. The ground under the feet of the advocates of that kind of partition has been cut and they can therefore no longer stand on any solid basis.

There are, as I said, only a few families at present in this State which have so far evaded the effects of the inexorable laws of time and change in social outlook; but they too would succumb to those effects in a not distant future. There are not in fact more than five or six *tarwads* in the whole State in which the relationship between the individual members of a family are, at present, perfectly amicable. Their number is not greater either in Cochin or British Malabar. I challenge any one in this House to disprove this assertion.

MR. T. K. VELU PILLAI: May I ask my friend if he knows what the condition of the Parayath *tarwad* is?

MR. A. GOVINDA MENON: I include that family among the five or six families I mentioned just now.

PRESIDENT: Mr. Velu Pillai, you must mention six families and then put your question.

MR. A. GOVINDA MENON: In certain *tarwads* there may be one or two male members only who may be majors and they may have plenty of wealth to satisfy all their wants and work to engage their attention in full. When there are, however, a large number of members, say, more than five, in a *tarwad*, you will not find a single instance where there is not some sort of family quarrel among

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Govinda Menon.]

the members which acts injuriously against the prestige of the family and its unity, happiness and wealth. In many cases, the existence of any family quarrel will be unknown to the outside world. Family prestige would keep out such quarrels for long from the public gaze. But they would come out at last and would, after being taken to civil and criminal courts, finally lead to the break up of the family. Present-day partitions, in over 99 per cent. of cases, have resulted in this manner; and the wonder is, therefore, not that a large percentage of partitioned families has been ruined, but that an appreciable percentage of such families has thriven well. Legislation granting every individual the right to get his share of the *tarwad* property is, for these reasons, an absolute necessity at this moment. Any delay in granting such a right would only aggravate the evils which the absence of such a law has brought on the community in recent years.

But the question is asked whether such a drastic measure as the right for individual partition is desired by the community at large. I am convinced that, excepting a few here and there, the members of the Nair community as a whole are now for individual partition. The Nairs south of Quilon are *makkathayees* in *marumakkathayam* garb. Their opinion therefore is not of much value in a discussion of this question. The Nair community in central and north Travancore have completely changed their views on the question in recent years. A good many of them, especially in north Travancore, stood against partition at the time of the Nair Regulation. They were mostly *karanavans* of the aristocratic *tarwads* in those places. The junior members were even then on the whole solidly for partition. The majority of the community would then have been satisfied with a measure for *thavazhee* partition. Conditions have entirely changed during the last decade. Individual partition is now the cry of the community everywhere. There are, even now, remnants of the old die-hards who wanted no change and fought tooth and nail against any reform in the family law; but they are now few and far between and are chiefly composed of old or uneducated *karanavans* of old Nair families and of new well-meaning educated men who have had no occasion to get any experience of any really living *marumakkathayam tarwad* and of the difficulties and disabilities of the female-members and of the junior male members of such a *tarwad*. The chief arguments brought forward by these anti-individual-partitionists are the effects of such a partition on the females of the partitioned *tarwad* and on the general economic condition of the community. They predict that individual partition would render the female members of a family helpless and destitute and would contribute to the economic ruin of the community by enabling the youths to squander away their newly-got wealth. It is also alleged that such partition would produce a vast number of what are styed uneconomic holdings and would thereby cripple the economic strength of the Nair community. These predictions, doubts and fears have no solid basis for their foundation. They originate either from selfishness or

LIBRARY ARCHIVES Kerala Legislative Assembly

from an innate conservatism that loves no change or from a sentimental regard for the hoary system that had its own part to play in the past or from an inadequate knowledge of the results of the interaction of economic forces that might be given free play in the moulding of a free, independent and intelligent community like that of the Nairs; and they are, therefore, not entitled to any serious consideration at the hands of the legislature.

The vast change that has come over the community on the question of partition needs no proof at my hands. It is clearly seen from the numerous meetings held and the memorials sent concerning individual partition during the last two or three years. I remember well the time when a good majority of us in north Travancore disliked the very idea of partition.

Within the last two decades, the ideals of the community have undergone radical changes. At a largely attended meeting of the Nairs of the Kunnatnad taluk held at Perumpavur in the year before last, a resolution demanding legislation granting the right of individual partition to the members of Nair *tarwads* was discussed at length and passed unanimously. Most of the *karanavans* of the Nair families in the taluk were present on the occasion, but none raised a voice against that resolution. Many of those *karanavans* were those who cursed the very suggestion of partition—not to speak of individual partition—in the not-distant past. Mr. R. Isvara Pillai, who opposed *thavazhee* partition during the passage of the present Nair Regulation through the Legislative Council, has been an out and out individual-partitionist all these years and has recently stated that his opposition to the Nair Bill was due to the fact that he considered that individual partition and not *thavazhee* partition was the proper remedy for the ills of our *tarwad* system. Another gentleman whose name I do not wish to mention was once a stout opposer of—

MR. T. K. VELU PILLAI: I wish to know from Mr. Govinda Menon, where Mr. Isvara Pillai's *tarwad* is.

MR. A. GOVINDA MENON: Nearly five miles north of Kottayam.

MR. T. K. VELU PILLAI: I wish also to know where Mr. Isvara Pillai has been living all along and whether he has visited his *tarwad* at any time.

MR. A. GOVINDA MENON: He lives at Parur but visits his house near Kottayam usually more than half-a-dozen times every year, even though the management of the family is in the hands of his elder brother who is the present *karanavan* of the family.

PRESIDENT: You need not explain, Mr. Menon. You can go on with your speech.

MR. A. GOVINDA MENON: This is the state of affairs regarding partition so far as north Travancore is concerned.

Some of my friends here do not wish to go the length of immediate outright individual partition; they advocate for the present only

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Govinda Menon.]

a kind of *thavazhee* partition. This will only multiply the existing evils a hundred-fold—the evils which we want to remove by multiplying the number of *karanavans*. It is admitted on all hands that the general tendency of the community is towards individual partition and *makka-thayam*. A man generally does not live with his sisters and brothers, but lives with his wife and children. The theory of association is an important factor and there is the moral duty conflicting with it. In the fight between the two, morality goes away and immediate affection plays a greater part in the disposal of his money. For these reasons, I request the House to consider well before it advocates *thavazhee* partition.

Two other provisions in the bill relate to marriage and devolution of property. As regards marriage, I am fully at one with what was said by Mr. Padmanabha Pillai. Not only should the Nair male be prohibited from marrying another Nair female while already married to a Nair wife, but a non-Nair who is married to a Nair wife should also be prohibited from marrying a caste-wife. If in a State like Cochin, where the influence of the Brahmin community predominates a hundred times more than here, a piece of legislation embodying the above provisions could be passed with the assent of the Brahmin community, I think it will be a shame on us to enact a law here without these provisions. As regards divorce, I am at one with Mr. Velu Pillai in urging that it should not be adjudged in the way it is being done now. There is a kind of publicity in these divorce cases. I think this should be guarded against by providing that all divorce cases should be heard in private. I am certainly an advocate of free divorce. It does not mean a free license to cast a woman away just as you cast off an old cloth. There must be definite reasons for divorce and those reasons must be adjudged by a court of justice before a divorce case is disposed of. As for the incapacity etc., of females to manage their properties referred to by certain members, I can only say that Nair women are no whit behind their sisters of any other community. The argument of 'the weaker vessel' cannot, with any fairness, be used in a piece of legislation concerning the Nair community. If there had been a lady member in this House, she would have opposed such an argument as absolutely frivolous.

As regards devolution of property, I am sorry that a gentleman like Mr. M. Raja Raja Varma should ever have complained that the bill touches the rights of non-Nairs. Brahmins are included in the definition of non-Nairs and if a non-Nair wants a wife from the Nair community, he must consent to endow her with as much right as he would have given to his caste-wife.

MR. G. PARAMESVARAN PILLAI: Louder, please.

MR. A. GOVINDA MENON: The same law that binds the Nair intestate father should also bind the non-Nair intestate father. Whatever is left by a non-Nair father should be inheritable by his Nair wife

LIBRARY ARCHIVES Kerala Legislative Assembly

and children in equal proportion with his caste-wife and her children. If there are no caste-wife and children, the Nair wife and children should have not only the whole of the self-acquired property of the intestate, but also a portion of his family estate, if such a non-Nair father had a heritable interest in it as is provided for in the *Mitakshara* law. I request the non-Nair gentlemen who are here not to be selfish in voting for a legislation which affects not only the interests and welfare of our own community, but the interests and welfare of the caste Hindu communities of Kerala as a whole.

The Council rose for lunch at 2-23 P. M.

The Council re-assembled after lunch at 3-10 P. M.

RAO BAHADUR K. A. KRISHNA AIYANGAR: Sir, the Nair Regulation Amendment Bill now before the Council introduces certain epoch-making changes—changes which, if not approached in a spirit of sympathy, may appear to be revolutionary, especially the provisions relating to partition, monogamy and intestate succession. In the dawn of social life, Sir, all joint families, whether patriarchal or matriarchal, were generally impartible. It is said that joint families in India were impartible at the time of the migration of the Nambudiries into Kerala and that this character of impartibility came to be accepted as a normal feature in the centuries that followed the colonisation. Much has been said about the economic advantages and dangers of partition. The evolution of society in India necessitated the break-up of the joint families in the far-off past and in families governed by Hindu law partibility became the rule. Similar forces have been in operation in our midst for some time past and the principle of impartibility must be abandoned sooner or later. It cannot any longer be pretended that, for the preservation of *tarwad* properties, junior members must continue to be kept in leading strings by their *karanavans*. There is a strong feeling in the minds of a large section of the Nair community in favour of partition. The existing law allows it only in the impossible contingency of all adult members agreeing to it. It would he unfair to question the wisdom which imposed impartibility on *marumakkathayam* families in the past. They have evolved during the course of centuries a distinctive culture and civilisation of their own. But, it appears to me, Sir, a strong case has been made out for a change in the existing law and it is the duty of the legislature to accord what support it can for satisfying the reasonable aspirations of an appreciable section of the Nair community.

While going so far, I am not prepared to recognise the wisdom of adopting in their entirety the provisions in the draft bill as regards partition. All sections of the Nair community are apparently agreed that the disintegration of the *tarwad* is essential to help their onward march. The only question is whether the disintegration should be complete or partial, in other words whether it should be an individual partition or *thavazhee* partition. That is the question that troubles and divides the community and demands the anxious consideration of the Council. *thavazhee* partition in the opinion of some does not afford adequate relief,

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. A. Krishna Aiyangar.]

while in the opinion of others individual partition spells the ruin of Nair *tarwads*. I would suggest for the consideration of the Council a solution which must satisfy all reasonable aspirations. Unlike the families governed by the Hindu law, every male or female born in a Nair *tarwad*, whether adult or minor, is a co-owner with the rest and the eldest male, the *karanavan*, is the manager. The position is to a large extent unnatural. Till thirty or forty years back, generally speaking, his nephews married his daughters and his nieces his sons. This acted as a corrective on the vagaries of *karanavans*. There was more good feeling and cordiality between the *karanavan* and junior members. This marital arrangement has, for some time past, not generally been resorted to. Young men in this democratic age naturally demand greater individual freedom and a wider field for the choice of their companions in life. To that extent the feelings of the *karanavan* for his *anandarans* are estranged. He is beginning to bestow greater attention on the material wants of his wife and children. That induces an element of discord and disunion in the family. Under the impact of a highly materialistic civilisation, young men both in Travancore and elsewhere in India are thinking more of their individual rights than their collective duties to the common family. Not unfrequently do we find a number of collateral branches living in a common *tarwad* house under the control of a common *karanavan* between whom and the members of the several branches there would not be that intimacy of touch and that cordiality of feeling that we naturally expect to find amongst the children of the same mother. Under the circumstances, the plea for partition is perfectly legitimate. I suggest that in cases where a *tarwad* consists of several *thavazhees*, it should be open to any member of the family to ask for a partition between the different *thavazhees*, the share of each *thavazhee* depending on the number of members of which the *thavazhee* is composed. In cases where the *tarwad* consists of a single *thavazhee*, individual partition should be allowed where the majority of the adult members in that *thavazhee* demand such partition. In a *tarwad* consisting of several branches, we may safely presume the existence of disunion. In cases where the *tarwad* consists of a single *thavazhee*, we may presume with equal safety that there is no discord justifying a resort to partition until the majority of the adult members ask for it. These are my views on the subject of partition and I believe there is nothing revolutionary in these ideas. They will help an ordered evolution towards the goal of individual partition.

Now, passing on to the subject of monogamy, I fail to see the wisdom or propriety of introducing into Hindu marriage institutions a doctrine of the Christian church. Marital life in India has evolved for as good types of men and women as are to be found anywhere else in the world. What is the reason for the proposed change? No doubt each race has got its own traditions behind it and legislation as far as possible in social matters should conform to existing usages unless they are

LIBRARY ARCHIVES Kerala Legislative Assembly

injurious in themselves and would arrest the normal growth of society. In such a case drastic legislative measures would be justified. Both Hindu law and the customary law of Malabar have not penalised polygamy. Resort is had to it only under very exceptional circumstances, such as incurable disease or barrenness in the wife. The Hindu is naturally anxious to have children of his own to perpetuate his lineage, to perform his funeral oblations and to carry on hereditary offices of trust and responsibility. Remarriage of the husbands under those circumstances cannot be stigmatised as immoral or subversive of social order. Remarriage in these cases generally takes place with the consent and often-times at the suggestion of the first wife. The solution that the monogamy gospel suggests for these difficulties is divorce or union with another unmarried woman which in the eye of law will not be a marriage and which will not confer on the woman's children the status of legitimacy or the civil rights attending it. This is concubinage pure and simple. I respectfully submit, Sir, that this is a worse evil than the evil of polygamy. Beyond an extreme statement that the existing system allows rich men to marry more than one wife, no case has been made out for making a radical change in the existing law. Under ordinary circumstances, no man who loves domestic peace and happiness will go in for more than a single wife. And when he does it we must be satisfied that he does so under a justifiable necessity. The idea of divorcing the wife after several years of a happy married life is from the stand-point of social morality much more objectionable than polygamy. I was anxiously listening to the advocates of monogamy to tell us something definite as to how the Nair society had become demoralised or would be demoralised by the retention of the privilege of marrying again when another wife is alive. I submit, Sir, that exceptional erratic cases should not weigh with us in coming to a conclusion.

The last subject on which I would like to make a few observations is the subject of intestate succession to the estate of a deceased husband or father. Until the passing of Regulation I of 1088, on the death of an acquirer, the property devolved on the joint *tarwad*. Latterly the members of the acquirer's *thavazhee* in preference to the common *tarwad* were held to be the rightful heirs. The wife and children had no right of succession. Regulation I of 1088 for the first time conferred a right on the wife and children to the extent of one-half of the acquisition, the other half lapsing to the *thavazhee* of the acquirer. As several of my friends have already pointed out, *karanavans* have ceased to function as responsible heads of a family corporation. Beyond providing an unsatisfactory meal in the *tarwad* house for junior members, *karanavans* have not recognised in recent times the existence of other obligations to the members of the family. I am told, Sir, that, till about 40 years ago, it was a common practice for the husbands to visit their wives in the latter's *tarwad* houses. Latterly, a change had come over the habits and ideas of the people. Wives began to live with their husbands and the maintenance of the wife and children and the education of the latter were considered to be outside the scope of a *karanavan's*

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. A. Krishna Aiyangar.]

duties. A new form of family life foreign to the original system of *marumakkathayam* began to develop. With the joint labours of the wife and children, the man began to make some acquisitions. It is perfectly natural that, under the circumstances, the acquirer should wish all this property to go to his wife and children, instead of allowing any portion of it to go to unsympathetic and often-times distant relatives on the mother's side. The draft bill proposes to give the entire inheritance to the wife and children. It is only a legislative recognition of what obtains in practice. It would be very satisfactory if the inheritance in the hands of the wife and children is burdened with an obligation to maintain the surviving parents of the acquirer if they have no other means of maintaining themselves. So far as the Nair community is concerned, there is a general disposition to accept the proposed change. But when we come to the question of the succession of a non-Nair husband or father the provisions in the bill before the House assume a highly controvefsial aspect. The question was raised by some of my friends why non-Nairs sought the society of Nair ladies if they were not prepared to give to the Nair wife and her children the same rights as are given to the caste-wife and her children. My answer is a very simple one. The conditions now proposed were not in contemplation when that marital union was settled. Rights and liabilities are sought to be created for the first time under this bill. I think the answer is conclusive. To my mind the question from whom the marriage proposal proceeded is irrelevant to the discussion. Rights and liabilities of a marital union cannot be made to depend on the question who proposed the marriage, the bride's party or the bridegroom's party. Even the most violent partisans of the proposed change will not, I trust, advocate retrospective effect being given to this provision. It would be entirely subversive of all principles of social legislation when an attempt is made to interfere with the personal law of non-Nairs in the matter of the devolution of property, where the parties sought to be injuriously affected do not agree to the change. If it is proposed to apply these provisions only to marriages to be solemnised subsequent to the date of the passing of the present bill, the question will naturally arise whether there is anything inequitable in applying these provisions to future marriages. Non-Nairs would enter into such unions with full knowledge of the obligations imposed by law and it may appear at first sight that there is nothing objectionable in the proposed arrangement. Let us examine the question a little more in detail; and I am afraid we shall be confronted with serious difficulties. The bill proposes to divide the property equally between the Nair wife and children on the one hand and the heirs of the non-Nair father or husband according to his personal law on the other. In other words, equality of rights is the position that is now sought for. The position, though apparently fair, is really unfair and inequitable. To avoid misconception, let me state, at the outset, that, in my opinion, the Nair wife until remarriage and her minor children should have a right of maintenance on the estate of the deceased in the hands

LIBRARY ARCHIVES Kerala Legislative Assembly

of his heirs. That would be but a bare minimum of justice. That would not conflict with the basic principles of Hindu law though the judges who decided the case reported in T. L. R, Vol. XX, page 65, seem to have thought that the claim of the minor children alone could be upheld. Now coming back to the question that I mentioned a little while ago, let us apply the proposed provisions to a practical case and work them out. A non-Nair husband governed by the *Mitakshara law* dies leaving behind him a *sastraic* wife, five sons by her, a Nair wife and a single child by her. Or take another case. He leaves behind him a Nair wife with five children, the *sastraic* wife and one child by her. There may be other cases where there are only a widow under one class and a widow and a number of children under the other. I put it to the House to say whether the proposed division into two equal halves is either fair or equitable. The question cannot admit of a serious difference of opinion. Hindu law, Sir, does not recognise woman as a distinct root of inheritance and any attempt at partition based on the number of wives would be a violent innovation that this House should not sanction. Apart from sentimental ideas, let us see whether the two marriages are, in their character and the obligations entailed, of the same status. The one is a sacrament and it is not dissolved even on the death of the husband. It enures throughout the life-time of the widow. A remarriage of the widow in Travancore will be invalid. Even in British India where the remarriage of Hindu widows is legalised by statute, in the event of a remarriage, she is divested of any right that she may have acquired to the property of her deceased husband. Divorce is not recognised by Hindu law. As regards Nair ladies, the union is in the nature of a civil contract. It is a union which the parties thereto may dissolve at will without assigning any reason whatsoever. Unconditionally without assigning any reason the man or woman goes to the nearest civil court and says: "Here I am, give me a divorce." The party has only to wait for six months and at the end of it acquires the necessary freedom for entering into a fresh marital alliance. Is there any similarity between the two types of marriages? Is there the same legal obligation to keep alive the memory of the deceased husband? I daresay, Sir, that in well-regulated Nair families too, a loving wife under normal circumstances may not care to marry again. But I am now just examining, Sir, the legal position of the incidents of the marriage as recognised by law. It is open to a Nair lady to ask for a divorce, a privilege withheld from her Brahmin sister. The Nair lady is competent to contract a fresh marriage alliance. The Hindu widow is debarred. Then again, under the Hindu law the widow does not get an absolute estate under any circumstances. When there are sons, her right is restricted to maintenance. When there are no sons, she succeeds to the estate of her husband. She is only a qualified owner. Her powers of alienation are considerably restricted and, after her death, the estate devolves on her husband's heirs. What is the position of a Nair widow under the present bill? With or without children, she is the absolute owner of her share.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. A. Krishna Aiyangar.]

She can dispose of it according to her pleasure. She may make a present of it to a second husband. The strongest advocates of the rights of a Nair lady in the estate of her non-Nair husband do not apparently claim for her a position superior to the position of the caste-widow herself. The plea is rested on the claim for equality, but there is no equality in the character of the marriage, in the obligations entailed by it and in the freedom of disposition of the property that they are to inherit from their husbands. As I remarked a little while ago, woman under the Hindu law is not a distinct root for purposes of inheritance and partition. A Hindu father dies leaving behind him two wives, one son by the first wife and four sons by the second wife. After providing for the maintenance of the two widows, his estate is divided into five equal parts, one-fifth to his son by the first wife and four-fifths to the sons of the second wife. No authority can be found in Hindu law or any other system of civilised jurisprudence in support of the novel proposal in the draft bill. It is not logical and it cannot be supported on considerations of natural justice.

MR. T. K. VELU PILLAI: I wish to know whether, in view of the rights of the Hindu widow to get maintenance charged upon the ancestral property of her deceased husband, the share of the husband's separate property may not be available to the Nair wife.

RAO BAHADUR K. A. KRISHNA AIYANGAR: I conceded a little while ago that the wife and children of a non-Nair are entitled to maintenance. The question whether this right of maintenance instead of being enforced by periodical payments cannot be made to represent a certain portion of the corpus of the separate property, is a matter to be worked out with reference to the facts and circumstances of each case. It is not the inheritance of an intestate succession. Possibly, maintenance rights when worked out may represent a half-share or more than a half-share or less than a half-share in the estate of the deceased. My submission is that it ought not to be a matter of rule of thumb determined by the number of wives. Even in matters of collateral succession, woman under Hindu law does not represent a distinct root from whom inheritance flows, or who determines the extent of the children's inheritance. A Hindu governed by the *Mitakshara law* dies leaving a widow and two daughters. After the death of the widow, the daughters are in joint enjoyment of the property, but as qualified owners. They die leaving behind them—one, three sons and the other, two sons. The estate is divided equally between the five sons. The *per stirpes* theory does not, under Hindu law, apply to woman at all. When we are introducing innovations into Hindu law, we must, as far as possible, build on existing foundations and in conformity with its provisions and not create estates absolutely foreign to the spirit of that system.

I now pass on to another aspect of the question. Marriage of daughters governed by Hindu law is an absolute necessity for which the whole of the family properties even may be alienated. The widow gets

LIBRARY ARCHIVES Kerala Legislative Assembly

maintenance, daughters are to be maintained and married. Their marriage cannot be put off indefinitely. Excommunication from orthodox society will be the result. However much we may disapprove of the orthodox system, there is no use in our ignoring its existence. We have to make provision for the marriage of the daughters. It is equally unfair to ignore the claims of a Nair wife and her children for some beneficial interest in the estate of the deceased. The ideal solution may perhaps be to provide for the maintenance of both the widows, to provide for the marriage of the daughters by the caste-wife, and divide the rest equally amongst his sons by his caste-wife and his sons and daughters by his Nair wife. The division that I am thinking of is an outright equal *per capita* partition amongst all these children. But even here the position is not free from serious difficulties. The funeral expenses of the deceased and the performance of *sraddhas* have to be provided for from the common estate. Serious differences of opinion may arise between these two classes of heirs as to how much should be spent and as to the items under which expenditure should be incurred. The non-Nair wife and children may not believe in the efficacy of the performance of these ceremonies as helping the deceased in his progress through the next world. Then again the *sastraic* wife according to the usage sanctified by the practice of centuries may have *vratams* to perform. The utility of this expenditure will be seriously questioned by the children of the Nair wife. Then comes the marriage of the daughters, a duty cast on the family for the discharge of which heavy expenditure may have to be incurred, much larger in the majority of cases than a *per. capita* division including daughters may permit. There is no escape out of the difficulty. Very naturally, the children by the Nair wife will demur. They may say that the expenditure may be met out of the share of her caste brothers. The property descends burdened with these obligations. And the obligations will be respected and carried out but for the introduction of a new class of claimants to the estate of the deceased. All these difficulties are sought to be introduced into Hindu society, just that a particular community may have the satisfaction of having asserted their equality of rights. The situation is fraught with mischief and the proposed innovation may be regarded as an unwarranted interference with the religious rites and observances of other communities. It will be idle to expect general agreement or good fellowship between these two classes of heirs. In the best interests of society there is no doubt that the avoidance of such marriages in future will be the most satisfactory solution. The result should be secured only by the force of public opinion. The proposed legislative provision is not the proper instrument for bringing about the desired consummation. And after all, Sir, as regards the non-Nair husbands and fathers, could we not leave it to their sense of responsibility and the persuasive power of their wives for a satisfactory provision being made for the benefit of their wives and children? Before Regulation I of 1088 was put on the Statute Book, do I understand my Nair friends to say that Nair and non-Nair fathers did not provide for their children by way of gifts *inter vivos* and by way of test-

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

amentary bequests? I know as a matter of fact that they did what was possible within their limited resources to help their wives and children. Ever since the point of time when junior members wanted to procure a home for themselves and their wives and children, where they might live in contentment and ease and comparative poverty but unfettered by the meddlesome interference of *karanavans* or ladies of the *tarwad*, I say husbands and fathers did continue to make these provisions. They continued to make these provisions even after Regulation I of 1088 and no doubt they will continue to do so hereafter also. The number of ladies marrying non-Nair husbands is a very small number and even out of this there may be only, after all, very few cases where provision is not made. Every self-respecting husband will do it. There may be a few unscrupulous individuals who may not realise their duty and these people can easily defraud not merely the Nair wife and children but the *sastraic* wife and children too by disposing of their acquisitions before their death.

MR. N. PADMANABHA PILLAI: Sir, I wish to ask whether the defects pointed out by Mr. Krishna Aiyangar apply to non-Nair husbands who are not followers of Hindu Law.

RAO BAHADUR K. A KRISHNA AIYANGAR: I have not bestowed much thought on that particular aspect; but I would merely say that even there I have no doubt that, whenever it is possible to make a provision, they will do it. The difficulties that I pointed out are not likely to be so serious as when we are contemplating a case of a non-Nair husband governed by Hindu law. But still, whatever be the particular community, I would trust to the sense of responsibility of the man and the persuasive power of his wife to make a fair provision for the wife and children. In cases where the party is unscrupulous, he easily avoids a statute by willing away his property. There may be a few cases like that. For the sake of these few cases, do you think that it is worth while calling into existence strong feelings on a matter in which the one thinks rightly or wrongly that his religious observances are rudely interfered with? Is it worth the game? When we are embarking on a social legislation, I have always felt that, so far as a particular community is concerned.—

MR. T. K. VELU PILLAI: I wish to know from Mr Krishna Aiyangar whether the *Mitakshara* daughter of a Hindu ordinarily respects the Nair wife of her father as a step-mother?

RAO BAHADUR K. A. KRISHNA AIYANGAR: It is not a question that can be satisfactorily answered by anybody. I may propound another question for my friend to answer. Does the daughter of a Brahmin wife respect her caste step-mother? If he can answer that question.—

MR. T. K. VELU PILLAI: One question is not answered by another. I want to know whether the girl would call the Nair wife as step-mother.

LIBRARY ARCHIVES Kerala Legislative Assembly

RAO BAHADUR K. A. KRISHNA AIYANGAR: My experience is rather limited. I cannot give my friend the information he wants. I daresay that, even when the two wives belong to the same caste, there is likely to be ill-feeling. And certainly in cases where the children of the first marriage are children of the *sastraic* wife and where the step-mother and children belong to a Nair community, it is no doubt desirable that the children by the first wife should look upon their step-mother with affection. After all it is too much to expect it from married girls, who are quite as democratic as their brothers whose ideas of reverence to the elders are being seriously undermined by the modern ideas of fraternity, equality and liberty which the school text-books inculcate. As I was remarking, in matters of social legislation, any attempt at improving the status and interests of a particular community should not produce as a direct result a prejudicial effect upon the fortunes of another community with a distinct personal law of its own. Love and affection between a married couple transcend the limitations of caste and race and in the generality of cases no serious injustice may result from the absence of a statutory provision of this nature. Possibly there may be a few cases where injustice may result. And it is in view of such cases that I suggested that the estate of non-Nairs should be saddled with the maintenance of the Nair wife and her minor children. Some time back, I happened to talk with one of the judges who decided the XX T. L. R. case disallowing the claim of the wife for maintenance against her husband. I was told that the decision was based mainly on the personal law of the husband. My view all along has been that the claim for maintenance was a very just claim and as some doubt was thrown by the decision I concede that the right might be declared by the statute.

The freedom to marry another wife would not be a ground for extinguishing the right of the first wife for maintenance until she re-marries or is divorced. Whether the maintenance to be allowed to a Nair widow and her children should take the form of periodical payments or should be satisfied by a specific portion of the property of the intestate is a question to be worked out in accordance with the facts and circumstances of each case. The legislature cannot fix a ratio that will be of uniform application. Injustice will result if the legislature did it. With these observations and reservations, I support the motion before the House.

MR. J. JOHN NIDIRY: Sir, I have great pleasure in welcoming the Amendment Bill which is just introduced by my friend Mr. Raman Pillai. I have also great pleasure in supporting the principle of the bill generally.

No doubt, Mr. Raman Pillai admits that the bill is capable of further improvement. I am also not unaware of the large volume of opinion against some of its provisions. But the main question before the House is in regard to partition, *viz.*, whether we should first try with *thavazhee* partition, as was once attempted by my friend

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. J. John Nidiry.]

Mr. C. Raman Tampi in the last Council, or whether we can at once jump into individual partition and *makkathayam* as proposed in the bill under consideration. I may be permitted to state in this connection that, when my friend Mr. Raman Tampi brought in the last Council a Nair Bill based on *thavazhee* partition, I was against such a trial; and I think the House will agree with me when I say that there was great opposition from the people at large, so much so that it was thought that it was not quite advisable to proceed with the bill. Probably, that may be also one reason why my friend Mr. Raman Pillai has introduced this bill on the lines of individual partition. I am also glad to find that there was another attempt by my friend Mr. K. Parameswaran Pillai also to introduce a bill on the the same lines. It is also gratifying to find that another bill which is awaiting our consideration *viz.*, the Vellala Bill, is also drafted more or less on these lines. All these indicate that *marumakkathayees* are generally for individual partition. Of course, in cases of social legislation like this, we cannot get the measure passed unopposed. In every piece of social legislation, we are bound to meet with great opposition. On the whole, I think the bill, as it is, is very advantageous to the Nair community for whom we are called upon to legislate. For the last few years, I have been taking much interest in *marumakkathayam* legislation and watching the progress the Nair community has been making since the days of the late lamented Chief Secretary Mr. Thanu Pillai, who, for the first time, attempted a Nair Regulation. I am glad to find that several of my Nair friends have distinguished themselves in various walks of life. In politics, in literature, in journalism, in the public service in this State as well as elsewhere, at the bar and in this Council itself, we have got very distinguished members from this interesting and ancient community. But, I am not in a position to congratulate my Nair friends on their capacity as *karanavans* or managers of *tarwads* or, for that matter, even as junior members. (*Laughter and Hear hear.*) I may also be permitted to say that, though their achievements are very great in the various departments of life referred to above and even in the battle-fields during the recent war, I am sorry to find that their achievements in the paddy-fields and in *cherikals* in north Travancore especially are not worthy of being congratulated. I have been seriously thinking about the cause of this; and the more I have thought about it, the more it has struck me that the chief cause of this state of affairs is to be attributed to the system of inheritance which the community follows, a system which is not suitable to present-day requirements. In fact, I may compare the present day *karanavan* and his *tarwad* management to some of our ill-managed limited companies in Kottayam and in north Travancore. (*Laughter.*) The shareholders of those companies feel very unhappy like the junior members of *tarwads* by the way in which the company managers manage their business. The *karanavans*, like the company managers, would say that they are working for the common interest without sufficient remuneration. Nor

LIBRARY ARCHIVES Kerala Legislative Assembly

is the position of the creditors who have to deal with these *tarwads* or limited companies very enviable. So the *tarwad* management under the *marumakkathayam* system gives satisfaction neither to the *karanavan* nor to the junior members nor to the outsiders who have dealings with the *tarwad*. I have been thinking that the only solution for the whole question, or the only remedy for the improvement of the *tarwad* system is by effecting a change in the system of inheritance, as the present system has been really a block to the progress of the community. I fail to see why a community, which can progress so much in every walk of life could not make corresponding improvements in their *tarwad* management. Under these circumstances, I am really of opinion that some considerable change in the line of succession is necessary and I sincerely think that the line adopted by my friend Mr. Raman Pillai would really satisfy the requirements of the community, though the bill requires considerable adjustment in the Select Committee stage. I may be permitted to make one or two observations for the consideration of the Select Committee. For a complete and successful system of *makkathayam* and as a counter-check on the full liberty of individual right to partition, the marriage tie in the community should be made very strong. My view is that the provision in the bill with regard to the dissolution of marriage is not strong enough. I submit that the marital tie should be made more sacred and indissoluble. Only under very exceptionable cases should divorce and dissolution of marriage be allowed.

Another point which struck me in the course of the debate is with regard to the marital relation of other communities, especially with regard to the marriage of Brahmins, Kshatriyas etc., with Nair ladies. Of course, I can sympathise with the difficulties of other communities who have marital relations with the Nair community and I can also understand their future difficulties when the bill is passed. But, I think, neither the Nair community nor the Nair women's children should be made to suffer for the little inconveniences that the other communities might have to suffer by the passing of this Regulation. With these few remarks, I fully support the principle of the bill.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Sir, I am really glad that my friend Mr. Raman Pillai has brought forward early in the history of this Council a bill to amend the Nair Regulation which was passed about ten years ago. Considering how the original measure did not satisfy, even at the time, the advanced wing of opinion of the great Nair community, it was inevitable that, ever since it was promulgated into law, the members of this community should periodically try to bring forward bills to amend that regulation. It would have been undesirable that this kind of agitation should be allowed to continue outside the Council, without its being brought forward some time or other before this Council itself, so that its considered opinion may be recorded on some of the proposals put forward.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

A great deal has been said in the course of the debate to-day, Sir in regard to the volume of opinion in favour of one or other of the proposals contained in Mr. Raman Pillai's present amending bill. Much reference has also been made to the evidence collected in that very searching and elaborate enquiry, over which Dewan Bahadur Govinda Pillai, our venerated countryman, presided several years ago. May I point out that no reference has yet been made, however, except in the form of those vague and confident statements to which we are accustomed in the course of our debates, for the purpose of clinching arguments of one's own or destroying the arguments on the other side, to the *present* state of opinion in the Nair community? In regard to such an important measure, it is inevitable that, in such a numerous community as the Nair community, in which we find men and women in all stages of culture, in all stages of social consciousness, there must be a great many persons who are quite alive to the need to bring about alterations in the existing social usages, customs and laws. There would also be persons, who are not only not so alive, but absolutely unwilling to make any further changes in their personal laws. If a measure like that which Mr. Raman Pillai has now brought forward is brought to the Legislative Council, and the entire body of the Nair community within the State, and those who have been connected with that community in marital relationship, whether Nair or non-Nair, here or in the adjoining areas, are made to realise the urgency of their placing their views before the Council, and if time is given by the Council for opinions to be sent up to it, there is some probability of this defect being corrected. Then, perhaps, the views of the body as a whole would be offered, and there would be a chance, before we meet again, to hear the opinion of the various sections on the important proposals which so deeply concern their welfare.

In this connection, I hope that Mr. Raman Pillai would forgive me, if I were to point out that, on such an important measure as this bill, it is desirable that we should advance with reasonable slowness and deliberation, and that we should not act on his request to enact the law at once. Mr. Raman Pillai is naturally anxious that the legislative measure, for which he is responsible, should be passed with all possible celerity and added to the growing number of our statutes. But, in matters of social legislation, the more haste the less speed. It is no use legislating in haste and repenting at leisure. Repentance will come, when it does, not to the members of the Legislative Council, not to the members who represent the advanced wing of Nair opinion, who represent the forward movement in educational enterprise among the Nairs, and who have naturally got into the first Legislative Council elected under the new rules. I say, it is not these gentlemen and those who think with them that will repent, but those others who, by accident, are not here adequately represented to-day. Personally, as one who has been so long in Travancore, I feel that the best interests of the

LIBRARY ARCHIVES Kerala Legislative Assembly

Nair community require that in this most important legislative measure the fullest thought that this Council, that this community, that the friends of this community and that the Government can bestow on this measure, should be available before the bill takes its place on the Statue Book.

I say this again, because, in the light of the criticism to which we have all listened with so much attention, there seems to be a great deal in the bill, *as put before us*, that may be objected to on the ground of practical expediency, on the ground of a certain amount of impracticableness. We have been made to understand that, as far as some of the fundamental principles outlined in this bill are concerned, *e. g.*, those principles relating to intestate succession, the division of *tarwad* properties, the position of the *karanavan*, the duties of *karanavans* to the *tarwads*, and various other matters of absorbing interest to the community, the opinion of the community at the present time is *not* one and undivided. We have been told by Mr. Raman Pillai himself that, in regard to some of these matters, there is a *negligible* minority which thinks *differently* from him. He spoke of a "negligible minority." I do not know, whether, with his skill as a dialectician, which we know to be his characteristic and strength, Mr. Raman Pillai was not meaning a great deal more than perhaps the expression might ordinarily convey. Did he mean by "negligible" minority, a very small minority, a very small number of persons, who, compared with the bulk of the community, are so small that, for the purposes of statistical reckoning, then may be neglected, just as we occasionally neglect odd cash in making important calculations in hundreds and thousands of rupees? Or did he mean that a minority *as such* is entitled to be neglected, and that it is not entitled to be considered, as was said by some gentlemen bluntly the other day, when another question was under discussion? Whatever be Mr. Raman Pillai's intention in regard to the meaning of this phrase, and granting that there is a minority and that it is a very small minority, still on a question of principle, I would again lift my voice in protest against the idea of violent alterations of the long-standing usages of any community, especially such alterations as would mean not merely changes in the usages of *one* community, but of a *number* of communities which are brought into daily relation with that community, against the wishes of some members of it. There should be no such thing as imposing upon an unwilling minority, by legislative sanction, by a statutory tyranny, certain principles to which it objects. This principle I enunciated only the other day. I feel it is my duty now as a member of this Council, and my higher duty as a citizen, to lift my voice in protest against the acceptance of so retrograde a principle of legislation as coercing minorities. It was laid down but the other day, as though it was one of the accepted canons of legislation, that the opinion of the minority need not be considered. I then rebutted this false canon, but I did not point out then what I would now stress, *viz.*, that, if you look into history, you would not find, after the close of the eighteenth century, any attempt made, in any part of the old world

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

which claimed to be civilised, to impose upon an unwilling minority the duty of conforming to the opinion of the majority. Laws of conformity, laws of uniformity in religious or social matters smack more of Tudor legislation, and of bad Stuart legislation, than of modern legislation. May I appeal to my friend Mr. Velu Pillai, who has so appropriately cited the authority of Montesquieu, than whom I too cannot find a higher authority on this matter, to remember that all such attempts to coerce a minority ended in disaster and have been held in reprobation by the best political thought?

MR. T. K. VELU PILLAI: I quoted Montesquieu for a different purpose.

PRESIDENT: He is quoting for his own purpose.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I believe I am entitled to cite an authority on whom Mr. Velu Pillai relied to rebut his position.

MR. T. K. VELU PILLAI: As lawyers, we are accustomed to quote only what is of help to our point.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: And, as lawyers often fare, such partial citation will put them in inconvenient positions. (*Laughter.*)

I have had discussions with gentlemen who are dealing with the affairs of Nair *tarwads*, and who are brought into more immediate contact than I claim to have with the practical difficulties of such *tarwads*, and their opinions against some of the provisions of the bill carry weight with me. Further, I must submit, to the consideration of the House, certain distinct violations of principle, violations of canons of legislative equity and legislative practice which this bill seems to be guilty of.

I might also mention difficulties, which one or two communities will have to face, if the bill is passed *as it stands and at the present time*. It is a matter of satisfaction that the bill will be considered by a Select Committee. I would only hope that, considering the nature of the bill and the number of communities that will be affected by it, there will be adequate representation of the various communities on the Select Committee, so that it may not be said that the matter went by default because the Select Committee was constituted in a one-sided way. We all know that, in this important matter of improving the legal conditions of the Nair community, we are all one in regard to the method by which such improvement may be forwarded. But in regard to the details of any legislative measures which have been put forward, we are thoroughly at variance with one another now. Even the members of the community are not united. May I therefore plead that, in mere fairness, it is necessary that, before this Council is again called upon to proceed to vote upon each section

LIBRARY ARCHIVES Kerala Legislative Assembly

by itself, the Select Committee should have an opportunity of listening to *every* point of view, and should have had the advantage of having every point of view urged before it by its own members? For this purpose, I hope that, when the time comes for the Select Committee to be proposed, Mr. Raman Pillai will so constitute it as not to make it consist entirely of those who may called the friends of the measure, but include in it those who, at first sight, appear as opponents because they point out defects in the bill. He is no true friend who minimises defects and overlooks obstacles and leaves them to be discovered later on.

Now, in regard to the principles which are open to objection in the bill, the first against which I must protest is the extraordinary doctrine contained in the proviso to clause 3. According to this proviso—I say this subject to correction by Mr. Raman Pillai or any other member of this House—there is an attempt made to enact what might be called "retrospective legislation". I understood, from what I was able to hear of Mr. Krishna Aiyangar's speech, that there are also other parts of the bill, where some such retrospective effect is contemplated. I have not yet been able to discover them. But may I say that retrospective legislation, while it is undoubtedly a proof of absolute sovereignty, or even such legislative sovereignty as is found in the British Houses of Parliament, has been given up in other parts of the world ever since the latter part of the eighteenth century? It is not in consonance with modern practice, or what we call public equity, that any person, whether an autocrat or a supreme legislative assembly, should have this power. The legislature of England alone, on account of the manner in which its constitution has grown, possesses this power, and, as all know, who have been reading the constitutional achievements of English-speaking peoples in the nineteenth and twentieth centuries, such power of retrospective legislation has seldom been used. I am not able to recall, at the present moment, a single instance where such retrospective legislation has been attempted by the English Parliament during the last 100 years, except in bills of indemnity to gloss in over *minor* illegalities. In the American constitution, which was made by a race which seceded from the main stock of the English nation on account of the differences of opinion in regard to fundamental principles of liberty, it has been made one of the *fundamental* laws, which no amendments of the constitution can alter, that *ex-post facto* legislation is against the constitution and is illegal. Not even the unanimous consent of the nation can get retrospective legislation passed in the United States. May I appeal to this House to remember that we are now trying to establish precedents of a valid and valuable nature for this House to follow? We may remember that not only abstention from retrospective legislation in practice, notwithstanding the powers it has, by the Mother of Parliaments, but the absence of the power in all the other great legislative assemblies on either side of the Atlantic, should furnish valuable precedents to an assembly so young as ours?

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

MR. P. K. NARAYANA PILLAI: May I draw the member's attention to the corresponding section in Regulation 1 of 1018, which is also a precedent?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I am indebted to Mr. Narayana Pillai for drawing attention to the existence of a precedent for this thing!

PRESIDENT: This is only a repetition of that section.

MR. T. K. VELU PILLAI: Sir,—

PRESIDENT: I am afraid the speaker has not finished his answer to Mr. P. K. Narayana Pillai. Have you answered him, Mr. Rangaswami Aiyangar?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I am answering. I am quite willing to answer the other members also. But I must be allowed to go on with my speech, and it is not for gentlemen on the other side to treat me like a witness.

PRESIDENT: I think they have a right to ask questions.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: If they have the right to ask questions, I have also the right to refuse to answer.

MR. T. K. VELU PILLAI: Shall I ask or no?

PRESIDENT: You may ask.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I shall answer Mr. P. K. Narayana Pillai before I proceed to answer Mr. T. K. Velu Pillai. I was only speaking of the general principle that a member of this House is not a witness under an obligation to answer questions put to him.

In regard to Mr. P. K. Narayana Pillai's position, I am glad that he has raised this question, because a similar argument was brought forward earlier, and I had not then the liberty to meet it. It is natural that a gentleman accustomed to the daily practice of law should have that *innate* conservatism and reverence for precedents, which I have not been able to get into my blood. A bad precedent is to me only a bad precedent. The sooner we correct the mistake the better. My position would have been the same had I been a member of the Legislative Council in 1038 when the first Nair Bill was brought forward. I would have opposed the section then on the ground that it was based on a wrong principle. I am glad, therefore, that, by bringing forward, as in the original statute, this clause, Mr. Raman Pillai has given me an opportunity to press for the excision of that clause. I a n indebted to my friend Mr. P. K. Narayana Pillai also for having drawn my pointed attention to it, so that, when I have the opportunity, I might plead for the excision of this unwholesome clause. I am now prepared to await Mr. T. K. Velu Pillai.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. T. K. VELU PILLAI: Before Regulation 1 of 1088, did not custom validate such marriages?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I am not dealing with marriage.

MR. T. K. VELU PILLAI: That section has reference to marriage.

PRESIDENT: Mr. Velu Pillai, he is talking about retrospective legislation.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: The Nair Regulation did not give retrospective effect. I do not see the relevancy of the question here. However, this is the first principle I have to refer to, which was followed by the bill.

The second point I wish to object to is in clause 10. There, it is not a principle so much as what I may call legislative equity that I am concerned with—a principle of legislative logic or legislative consistency. I do not want to traverse the grounds of polygamy or monogamy and to see which of the two is more wholesome. I do not want to go into that question. My ground in regard to social legislation is simple. I am prepared to agree to any law that a community might, by its unanimous voice, demand, provided that such law is not contrary to public morals and is not subversive of the State. It seems to me therefore that the demand for monogamy is perfectly right and valid. If it is the wish of the people who belong to the Nair community that they should be protected from this evil of polygamy, as we are told it is, why should we allow members of this community to become sharers in this guilt, in some cases, as when a non-Nair has a caste and a Nair wife? It seems to me that, when we are dealing with the question of polygamy or monogamy, it is a question of absolute principle. We can have a compromise in other matters but not in questions of fundamental principle. In this particular case, I can conceive of instances in which a man who belongs to a community in which polygamy is permitted might have concurrently four wives living. Yet, he will be permitted, according to section 10 (*b*) to have a fifth wife, if she is a Nair. I ask, "Is not this one of the things which is totally repugnant to the principle of high morality on which presumably Mr. Raman Pillai bases his belief in clause 10 (*c*)" I merely bring this forward as one of those instances in which a certain amount of consistency is required and is not provided by the bill. Perhaps, if something is done like this, if a change is made by dropping the word 'Nair' and the clause is recast as follows:—"No one having a personal law of his own allowing polygamy shall marry a Nair female, while already married to another", then it would be all right. We should be able to protect Nair ladies from the contaminating influence of polygamic association, by prohibiting such marriages altogether.

Let me refer you to another violation of equity. When you are prepared to say that young people of the adolescent ages of 16 and 18,

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

who in our country are marriageable according to nature, should according to the new law be prevented from entering into valid marriages, and if they effect a marriage should have the union treated as void, I ask whether at least you should not protect the girls who in youthful indiscretion entered upon such marriages. I merely wish that, consistently with the high principles enunciated by my friend, he will come forward and adopt suitable modifications of his rules, to give relief in such cases. There should not be such a thing as tolerance and compromise in regard to questions of principle, when the principle is a moral principle, or creating illegitimacy by legislation.

The third point to which I would refer, before passing to the practical consequence of the bill concerning other communities, is the principle contained in the last clause *viz.*, 31. I have already dealt with a similar principle on a previous occasion. It appears to me that this Council is undertaking a serious matter of social legislation. It is necessary that the entire responsibility for the extension of any laws to other communities should be taken by this Council itself and should not be allowed to devolve upon others by a kind of general legislative devolution. It may be a minor section of the community which is now overlooked and is to be brought within this law; but it should be brought in only by a specific law. The provision seems also to be superfluous. For, I find that the definition of the term "Nair" at the commencement of the bill is sufficiently comprehensive, and therefore, such minor sections will come in automatically. The definition gives diverse names for Nairs, and includes "others known or recognised by custom as Nairs" under Nairs. Custom may be family custom. Under these circumstances, it seems to me that, if it is merely the idea of the author of the bill to make this law comprehensive and apply it to the entire community, the definition he has provided in clause 2 is sufficient for the purpose, without obliging this Council to accept a principle of delegated legislation, which is unsound on the face of it. It is one of those indirect ways of legislation against which this House has a right to protest. It is one of those cases of delegated function which would be always wrong. You may say that Government are aware of their responsibility and that it is to the Government that you delegate your power or your duty. I admit that the Government would not do a thing like that contemplated in the section without due enquiry. Nevertheless, I do think that the Government should not be given any responsibility which this House can more directly exercise in such cases.

I now come to the section which seems to me to be more open to objection than any others in the bill. It is section 13, provisos B and C. In this connection, I wish my friends who are interested in this bill and who are the supporters of this bill to permit me to declare at the outset that I am merely pointing out various defects so as to get them

LIBRARY ARCHIVES Kerala Legislative Assembly

rectified, and that I am not obstructing the passing of a wholesome measure which might remove existing disabilities and evils. To begin with, let me assure the House that I have considerable sympathy with those who want to safeguard and improve the position of the Nair lady who has married a gentleman who does not belong to the Nair community, and who, on account of the disparity in status and in personal law between herself and her husband, is obliged to depend upon such chance gifts as might be regarded as proofs of affection, or on gifts during life or on testamentary settlements. There is a strong natural claim for support, where the obligations of matrimony and parentage are imposed on man and woman. Something must be done by the legislature to correct the existing defects, by providing suitable maintenance or a provision for the wife and children, for widows and children, in such cases of mixed marriage. I quite recognise that. But, at the same time, it must be realised that the section is pretty comprehensive. It deals with all communities, as though they consisted of only two great sections, Nairs on the one hand and non-Nairs accustomed to marry Nair females on the other. Under the latter category, you get two great sections, *viz.* first, the section which belongs to a school which may be regarded as practically local, as Keraliya, which consists of the Kshatriyas, of Malayala Brahmins and of others in this country, who do not follow the Hindu law of other parts of India outside the Kerala tract; and secondly, those other Hindus who are governed by the *Mitakshara* or other schools of Hindu law. The latter consists of persons who are governed by one or other of those great schools of law which dominate the rest of India. Take, for instance, the people who are governed by *Mitakshara* Law. Before I proceed further, I should like to be permitted to state that what I shall say will be said without the least intention or desire to cause offence or to imply any reflection on any community. According to *Mitakshara* law and the *Dharma Sastras* as I know them, the union such as is contemplated by a *sambandham* of a *Mitakshara* Brahmin to a Nair lady *is not* a marriage under the law, and would be repugnant and contrary to it. There are conditions which I know, which I recognise, of marriages being spoken of in our *Dharma Sastras* between Brahmins and women of other communities. But, so far as I have been able to understand the *Dharma Sastras*, such marriages are *sacramental* marriages and not marriages according to the present legislative forms. These will not come under the same category with the former. It is what I may call a local custom, a custom which has arisen in Malabar and which is not found anywhere else in India, which authorises here the union of a Brahmin of the east coast with a Nair lady. Outside the Malabar coast, such unions will not be deemed marriages according to the customary Hindu law prevalent there. One of the great difficulties that has arisen in the social legislation of our State has arisen from this divergence of practice and ideals. There are two different points of view—one recognizing and believing in a *sambandham* as an absolute marriage, and the other not able to get over a certain amount of time-honored communal objection or repugnance to recognising such a union

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

as a valid marriage. In such a union, there is therefore a difference in the idea of it in the mind of the man and in that of the woman. This is what leads to an amount of difficulty in devising a law which would reconcile the divergent ideals.

But, it may be asked, "Is not the marriage voluntary?" Nobody is compelled to marry a Nair lady. The man makes the first move in this matter. In such a case, it must be made obligatory on the part of the man, morally as well as legally, to make a proper marriage settlement on the woman who regards the union as a perfectly valid union." That I grant. It is necessary that some provision should exist to safeguard the rights of women, if the communities are to remain in harmonious relation with one another, and in order that there may not arise jealousies and ill-will between the communities. But, there is a difficulty at the present time in regard to those persons who are domiciled on the west coast, the Malayala Brahmins and the Kshatriyas. I understand that, by a caste rule, there is something like an obligation on the men of these communities to marry from some other community than their own. If that is so, the position of such communities is somewhat different from the position of others who have the right, by custom, to marry in their own castes. In the communities like the Kshatriyas, there will be no question of polygamy arising. The unions will be monogamic almost invariably, and would be just like marriages between Nair and Nair. In regard to *sambandhams* which are contracted by men who are entitled to marry in their own caste, but who are not Nairs, we must face the possibility of a certain amount of polygamy. The imposition of wives on existing wives, if I may speak for myself, is repugnant to the principle of common humanity. There cannot be anything more injurious to domestic peace than the imposition of a co-wife upon an existing wife. Whatever be the traditional sanction given by law or custom to polygamy, in practice there is bound to be considerable distress, hardship and heart-burning in a polygamous household. We have been told, by some of those who support the bill, that we need not legislate for the convenience of others than those here represented. I hardly think that this is a correct position to take. If the effect of your legislative action will be to injure others as well as members of your own community, as in the case of possible polygamy, consequent on mixed marriages, you should forbear from such legislation. Mr. Velu Pillai quoted the *Ramayana* in justification of monogamy, and to claim for it the high example of Sri Rama, who had not any wives besides Sita. I may say that Mr. Velu Pillai's example was perhaps not very happy, as, according to a recent scholar, who has made the *Ramayana* his special study—I refer to Rao Bahadur C. V. Vaidya—there *are* passages in the *Ramayana* which appear to indicate that Sri Rama *had* other wives besides Sita! As far as I am concerned, I do not require citations from the *Ramayana* to enable me to realise the value of monogamy. It is because I share the belief of my friends

LIBRARY ARCHIVES Kerala Legislative Assembly

on the other side in monogamy that I urge very strongly that we should not go against this ideal, as we undoubtedly should; if in cases where a Brahmin, who has already a wife of his own caste living, makes a *sambandham* with a Nair lady, the Brahmin wife be treated as non-existent, as a kind of marital cipher. Is it right, I venture to ask the House, that in order to do "justice" to the women of one community, you should cause so much sorrow to the women of another community? I can hardly bring myself to accept a solution which attempts to rectify a wrong by doing a fresh one.

Next, I may pass on and refer to other practical difficulties which persons who follow the *Mitakshara* law and allied systems of law, will have to encounter if they are brought within the scope of this bill. I may refer to concrete instances. One has already been mentioned by the Deputy President in the course of his speech. He pointed out that, among Brahmins, the marriage of a girl is a necessary *samskara* and that it is absolutely incumbent on a family to get its girls married, any expenditure incurred on such marriages being regarded in law as necessary expenditure, with the right to be a first charge upon the family property. There is another similar duty incumbent on the family, which I have understood to have a claim not inferior to that of the marriage of girls in a Brahmin family. From what the learned Law Member observed, I now understand that its necessary character is as clearly recognised by the present-day Hindu law, as it is enjoined by the *Sastras*—I refer to the *upanayanam* of boys. This is also a second indispensable *samskara*. I believe there was a time, before reforming judges changed the customary law of Brahmins, when the marriage of a young man was regarded as almost on the same line as the marriage of girls and as having an equal claim to form a first charge on the family estate.

I should like the House to consider a concrete case, such as is not outside the bounds of probability, if the bill is passed in its present form. Suppose a Brahmin, following the *Mitakshara* system of law, has taken a Nair wife, when he has a wife of his own caste living. Suppose he dies intestate, leaving a widow of his own caste and four young sons and two unmarried daughters surviving, besides a childless Nair widow. Suppose also that his property consists exclusively of his own acquisition. I take it that, under the law as propounded in the bill, the caste-widow and all her children *together* will receive one-half of the deceased's estate, and the Nair widow the other half. Is it possible to consider that, out of the half which will alone accrue to them out of the property, the marriage of the daughters, and the *upanayanam* of the sons will be duly performed and that enough will be left to the widow and to the children for maintenance? On the same ground of equity, on which a share is claimed for the Nair consort, an equal share, I submit, can be claimed by each of the other heirs. In any case, under the proposed law, the caste-wife and children will lose the bulk of what the law now guarantees to them, and they will suffer much hardship thereby.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

'There is another difficulty which has been referred to casually by Mr. Ramakrishna Pillai. It relates to the practical difficulty of discovering the 'separate property' in a Brahmin family. This difficulty will be familiar to Vakils on the other side of the Ghats much more than to Vakils on this side of the barrier. It is this difficulty which led to the Hindu Gains of Learning Bill, whose story must be familiar to any student of the history of Indian legislation. Every court in the Tamil and Telugu country is frequently called upon to decide what constitutes a *Mitakshara* Hindu's "separate estate," and discover what quantum of ancestral property will convert a person's gains of science into an estate on which his family will have a lien, with rights of co-sharing. This is in accordance with the theory that, as a river derives its being from an almost invisible source, so all the capacity of a man to make self-acquisitions may be said to be derived from a little bit of ancestral property. Under this principle, even in what appears to be a man's pure self-acquisition, the members of his family have the right of co-parceners. Consequently, *his* right of free disposal of such property is limited by *their* right to get a share of it. No one who claims from, or through him, will have a greater right than he had. Under these circumstances, is it not likely that in almost every case in which the provisions of the new law are applied to the estates of deceased followers of *Mitakshara* and other systems of Hindu law, who have made *sambandhams*, the precise share of the inheritance will have to be decided in a court of law? Is it not likely also that the proposed provisions of the bill will increase litigation in the country and bring up before the courts a large number of complicated cases involving decisions on the conflict of laws? Mr. Raman Pillai stated that one of his objects in bringing his bill was to reduce litigation and the number and frequency of internecine quarrels. To my mind, this provision of his bill will successfully defeat his objects. It was with the intention of diminishing litigation and of emancipating property that Sir V. Bhashyam Aiyangar brought forward before the Madras Council his Gains of Learning Bill. He was supported practically by every lawyer of eminence in the Presidency, including Sir T. Muthuswami Aiyar and Sir S. Subrahmanya Aiyar. His bill received the unanimous support of the Madras Council. Yet it failed to become law, since it was found to be repugnant to a section of the Hindu community, to a 'negligible minority' if you like. The result is that, in the Madras Presidency, the old confusion in regard to self-acquisitions still continues. If Mr. Raman Pillai's bill is passed with this section, it is easy to foresee that the troublesome litigation so common in the Madras Presidency will be imported into Travancore in an aggravated form; and it is worth considering whether we have not sufficient litigation already in the land, with such questions involving *marumakkathayam tarwads* as the position of the *karanavan*, individual partition, and so forth?

There is another difficulty. The Hindu law of succession rests on a different principle from the law of succession in this country. The old Hindu law based the devolution on the sacramental responsibility for

LIBRARY ARCHIVES Kerala Legislative Assembly

the performance of *sraddha*. I believe that this is the modern law in some provinces. We may disbelieve in the efficacy of *sraddha*. But, whether we believe or disbelieve in it is immaterial. A *sraddha* will be performed even to a Hindu who dies declaring himself an atheist. This is because the obligation exists as a religious obligation on the survivor, and not as something due to a dead person. A Brahmin who neglects the performance of a *sraddha*, which he has to perform, incurs the disabilities of a *karma-tyagi* and practically becomes an out-caste. This duty may devolve upon even distant relations, in the absence of nearer kith and kin. The Hindu law has avoided the injustice of imposing an obligation without conferring corresponding advantages, by making property follow the line of the devolution of *sraddha*. I believe that, even under the present-day Hindu law, the cost of a *sraddha* is a first charge on a dead person's estate. To impose this hard duty, without providing reasonable facilities for its discharge, is obviously not fair. But, if the present bill is passed unamended, will there not be cases in which this obligation will rest upon a man's relations who do not get a bit of his property? Take the instance of a Brahmin who marries a Nair lady and has issue by her. He has not married a Brahmin lady, or having married one, she was childless and predeceased him. His entire property will go to his Nair widow and chidren, and the duty of perfoming his *sraddha* to a collateral Brahmin relation, who gets nothing out of the property of the deceased person.

Sir, the instances I have cited are likely to be very familiar to gentlemen who daily practise Hindu law. They must be able to think of many more instances of the kind, involving difficulties which the present bill will raise. My desire has been merely to show that, while we legislate, we should not shut our eyes to real difficulties, that we should proceed with due care and circumspection, so that a forward step taken need not be retraced. If certain communities are not as well represented in this Council to-day, so as to give them equality of voting strength with those who have urged the passing of this bill unamended in these respects, it is no ground for its forgetting what is due to them. For, all of us here are representatives, not of a single section or community, but of every section and community within the State. The responsibility that devolves upon my friend, the author of this bill, is great. But the responsibility on every other member in this House is not less than his. I say, let us unite in furthering the lawful wishes of the progressive members of the Nair community, such of them as wish—

MR. T. K. VELU PILLAI: I wish to ascertain whether Mr. Rangaswami Aiyangar would be prepared to answer a question.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Sir, I would appeal against interruptions in the middle of a sentence. English is a foreign language to me, and it is difficult for me even normally to speak it. The difficulty of speaking in it in the House will increase if I am interrupted, and if I lose my predicates!

PRESIDENT: He has not finished his sentence. Before finishing the sentence, how can he answer?

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

MR. T. K. VELU PILLAI: I thought he had finished.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I had not. In any case, I cannot complete my last sentence!

I believe I was saying that we should all have equally to bear the responsibility for this legislation and that we are bound to do our best for all communities alike, just as we might meet the wishes of the advanced wing of the Nair community which asks for the reforms embraced by this bill. My point is that we should do nothing to ride roughshod over the customs of other communities, such as are referred to both in the preamble and in section 13, as well as other sections of this bill. I believe that it is a commendable wish of the author of this bill to promote harmony, to bring in peace and progress. That is why I drew attention to difficulties which should be very carefully considered by a somewhat larger and more representative Select Committee than we are accustomed to, so that some statemanlike device might be discovered for meeting the just wishes of the Nair community to make suitable provision for the widow and the orphan, without at the same time creating difficulty with, or for, other communities.

MR. T. K. VELU PILLAI: If it is the duty of a *Mitakshara* family to perform *sraddha* for a deceased member, would Mr. Rangaswami Aiyangar treat the right of the Nair widow and children to the self-acquisition of a *Mitakshara* man similarly to a decree obtained by a creditor for advances made for legitimate purposes?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I am in a difficulty in answering this question. I have described the religious position. Not having had the advantage of a legal education, I cannot answer the question, nor can I balance the two claims as I do not fully understand one of the two. I do not know what the rights of the creditor are. Nor am I concerned with anything that courts or legislatures might have done to give the claims of creditors preference over claims for the performance of sacramental duties. If the courts or the legislatures have put the moneylender in a position of superiority so as to over-rule the performance of *sraddhas*, I would say that the courts and legislatures have done wrong.

PRESIDENT: It is not easy to answer. He is not a lawyer.

MR. T. K. VELU PILLAI: All that I wish to ask is whether the decree can be executed against property.

PRESIDENT: He cannot be expected to answer that question, not being a lawyer.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: It is not also my duty to explain all that.

MR. T. K. VELU PILLAI: Then I withdraw.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: One point, Sir, before I close my observations. It refers to the possible conflict of jurisdictions as well as law. Gentlemen who follow the *Mitakshara*

LIBRARY ARCHIVES Kerala Legislative Assembly

law might conceivably have a habitation in more than one jurisdiction. Assume, for instance, that a person has property in Tinnevelly and in Travancore, and that some of his self-acquired property has been invested in landed property in the Tinnevelly District and some here. What would be the position if, after this law is passed, a certain right is given to his Nair widow and children, and a relation, who is entitled to inherit the property under his personal law and who is bound to perform *sraddha*, raises in the Tinnevelly courts the question of the execution of a decree granted by a Travancore court to the Nair widow, or the execution of a warrant for sequestration of property issued by such a court, for the benefit of the wife and children? In such a case, difficulties of reciprocal execution of decrees as well as difficulties incidental to the conflict of personal laws in two different jurisdictions might arise.

I have only a few more words to say before I end my speech. I heard, with much satisfaction, my friend Mr. Velu Pillai, who has not been accustomed to show much deference to precedents, at least in our private discussions, particularly to precedents from the sister State of Cochin, cite the Cochin law as our guide in this matter. So far as I am concerned, precedents do not appeal to me, unless they can be supported by principle and by valid arguments.

MR. T. K. VELU PILLAI: May I know whether the Cochin Regulation may not be useful, as showing the facilities to pass such a law in a Native State like Travancore?

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: The question of facility is very simple and does not require proof from Cochin. Anybody who has read the constitution of the Legislative Council knows the facility which exists for such a law being passed by it.

To resume. In such important measures, it is not a precedent but a principle that should appeal to us in this House. I have stated what I believe to be the considerations which should weigh with the Select Committee and with this Council, when they proceed to deal with the bill clause by clause. While joining therefore in the chorus of welcome to this bill which has been given to Mr. Raman Pillai by members of this House, and while also asking that this House affirm the principle of the bill, I desire, at the same time, to make it clear that my welcome and my agreement are merely to the principle that certain sections of the Nair community want a change in their statutory law, and that they are entitled to all the consideration which the Council can give them. I do not understand that my acceptance implies anything more. I cannot, for example, accept some of the exceedingly controversial, and, if I may be permitted to say so, exceedingly questionable principles, which are undoubtedly involved in some of the clauses of the bill, to which I have been obliged to refer this evening, even at this late hour.

The Council adjourned at 5 P. M.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

LIBRARY ARCHIVES Kerala Legislative Assembly